



Transportation & Economic Development Appropriations Committee

**Friday, March 24, 2006
9:30 a.m. – 11:00 a.m.
Reed Hall (102)**

**Allan G. Bense
Speaker**

**Don Davis
Chair**



Florida House of Representatives

Fiscal Council

Committee on Transportation & Economic Development Appropriations

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AGENDA

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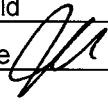

- I. Meeting Call to Order**
- II. Opening remarks by Chairman Davis**
- III. Consideration of the following bill(s):**
 - HB 299 CS Travel-Limited Life Insurance Coverage by Sobel**
 - HB 7079 Highway Safety and Motor Vehicles by Transportation Committee**
 - HB 7091 Real Property Electronic Recording by Civil Justice Committee**
- IV. Consideration of the following PCB(s):**
 - PCB TEDA 06-01 -- Quick Action Closing**
- V. Budget Workshop**
- VI. Closing Remarks & Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 299 CS
SPONSOR(S): Sobel and others
TIED BILLS:

Travel-Limited Life Insurance Coverage

IDEN./SIM. BILLS: SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	19 Y, 0 N, w/CS	Cooper	Cooper
2) Tourism Committee	6 Y, 1 N	McDonald	McDonald
3) Transportation & Economic Development Appropriations Committee		McAuliffe 	Gordon 
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

The offering and sale of insurance in Florida, including life insurance, are governed by the provisions of the "Florida Insurance Code." Before insurers deliver a policy or application form in the state they must file the form for approval by the Office of Insurance Regulation. Subsequent to approval, insurers' trade practices relating to the business of insurance are regulated pursuant to Part IX of Chapter 626, F.S. entitled "Unfair Insurance Trade Practices Act." The purpose of this part is to define, or to provide for the determination of, practices which constitute unfair methods of competition or unfair or deceptive acts and prohibiting such practices.

Recently, insurance regulators in several states, including Florida, have expressed concern about some life insurance companies denying life insurance to individuals based on a person's past or future travel plans. Although, according to the Office of Insurance Regulation such practices may be illegal in Florida under existing law, there is currently no express specific statutory prohibition against such acts.

The bill prohibits a life insurance company from refusing to insure, refusing to continue to insure, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely for reasons associated with an applicant's or insured's past or future lawful travel experiences. The bill also authorizes the Financial Services Commission to adopt rules to implement the law and to provide limited exceptions based upon emergencies and consistent with public policy.

This bill does not have a fiscal impact on state or local government.

This bill takes effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill prohibits life insurers from denying or modifying coverage solely for reasons associated with an applicant's or insured's past or future lawful travel experiences.

Safeguard Individual Liberty – This bill will increase lawful foreign travel options for individuals. People of the Christian, Moslem and Jewish faith, among others, may have greater opportunities to travel to lands having cultural and religious importance to them.

Empower Families – With the provisions contained in this bill, families may have more options to engage in lawful travel activities.

B. EFFECT OF PROPOSED CHANGES:

Regulation of Life Insurance/Current Insurance Practices

Section 624.602, F. S. defines "Life insurance" as "insurance of human lives." Life insurance indemnifies against loss due to the death of a particular person upon whose death the insurance company agrees to pay a stated sum or income to the beneficiary. The transaction of life insurance also includes the granting of annuity contracts, including, but not limited to, fixed or variable annuity contracts; the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability; and optional modes of settlement of proceeds of life insurance.

In Florida, the Office of Insurance Regulation (OIR) has primary responsibility for regulation, compliance and enforcement of statutes related to the business of insurance, and the monitoring of industry markets. The office provides regulatory oversight of company solvency, policy forms and rates, market conduct performance and new company entrants to the Florida market

Before any life insurance policy or application form is delivered in Florida the form must be filed with, and approved by, OIR.¹ As each filing is received, it is reviewed to determine compliance with applicable actuarial standards, statutory provisions, and administrative rules. Under current law, OIR is authorized to disapprove any form which, in addition to other reasons, is inconsistent, ambiguous, misleading, or deceptive.²

Once an insurer begins selling policies in the state, it is governed by, among other statutes and rules, the provisions of the "Unfair Insurance Trade Practices Act." The purpose of this part is to define, or to provide for the determination of, practices which constitute unfair methods of competition or unfair or deceptive acts and prohibiting such practices.³

In 2005, OIR became aware that some life insurance companies were denying life insurance coverage based on possible travel plans to certain foreign countries.⁴ In one instance, a policy was not approved

¹ s. 627.410, F.S.

² s. 627.411, F.S.

³ s. 626.9541, F.S.

⁴ Some companies have used the U.S. Department of State's Current Travel Warnings in their determinations. Travel Warnings are issued when the State Department recommends that Americans avoid a certain country. The countries listed below are currently on that list. In addition to this list, the State Department issues Consular Information Sheets for

because of an applicant's "potential travel to Israel."⁵ Upon further investigation, OIR determined that nine insurers had filed questionnaires with their application forms in which they asked about either past travel outside of the United States and/or whether the applicant intended to travel outside the United States in the future. The Office of Insurance Regulation contacted those insurers and those application forms were withdrawn.⁶

To prevent similar application forms from being used in the future, OIR initiated the rulemaking process to enact an administrative rule to specifically define as an unfair trade practice the exercise of unfair discrimination based on a person's future intent to engage in lawful travel. The rule (which also applies to annuity contracts, accident, disability or health insurance) prohibits an insurance company from refusing to issue policies solely because of the intent to engage in future lawful foreign travel or based upon past travel, unless the insurer can demonstrate that insureds are a separately actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.⁷

The Office of Insurance Regulation relies on s.626.9541(1)(g), F.S., a provision in the "Unfair Insurance Trade Practices Act," as the statutory authority for their proposed rule. The subsection reads:

1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.--

The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(g) Unfair discrimination.—

1. Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life, in the rates charged for any life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

Having gone through the workshop and public hearing process, the proposed rule is now scheduled for final public hearing and adoption by the Financial Services Commission (comprised of the Governor and the Cabinet) on March 16, 2006.

Situation in Other States

Other states have addressed the issue of denying life insurance coverage based on past or future travel plans. States which have enacted laws restricting denials based upon past travel plans include New York, Maryland and Illinois.

every country of the world with information on such matters as the health conditions, crime, unusual currency or entry requirements, any areas of instability, and the location of the nearest U.S. embassy or consulate in the subject country. The following countries are currently on the list: Democratic Republic of the Congo, Nigeria, Colombia, Afghanistan, Kenya, Iran, Iraq, Saudi Arabia, Nepal, Haiti, Indonesia, Zimbabwe, Lebanon, Liberia, Yemen, Burundi, Cote d'Ivoire, Sudan, Bosnia-Herzegovina, Somalia, Algeria, Uzbekistan, Israel, the West Bank and Gaza, Central African Republic, Pakistan, and the Philippines. See Current Travel Warnings, available at

http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html, viewed on January 24, 2006.

⁵ Letter to Congresswoman Debbie Wasserman-Schultz from a representative of American General Life Insurance Company (AIG), March 28, 2005, on file with the Insurance Committee.

⁶ Letter to Congresswoman Debbie Wasserman-Schultz from Kevin M. McCarty, Commissioner, Office of Insurance Regulation, on file with the Insurance Committee.

⁷ Proposed amendments to Rule 690-125.003, Florida Administrative Code, published on November 23, 2005, in Vol.31, No. 47 of the *Florida Administrative Weekly*.

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New York Insurance Law § 2614 provides that no life insurer shall make any distinction or otherwise discriminate between persons, reject an applicant, cancel a policy or demand or require a higher rate of premium for reasons associated with an applicant's or insured's past lawful travel experiences.⁸ Maryland and Illinois both have the same provision prohibiting a life insurance company from refusing to insure, refusing to continue to insure, limiting the amount or extent or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely for reasons associated with an applicant's or insured's past lawful travel experiences.⁹

States which have passed laws addressing the practice of insurance companies basing their coverage decisions upon applicants' past or future travel plans include Washington and California. In 2005, Washington passed a law which prevents insurance companies from discriminating against travelers for lawful travel by canceling or denying travelers life insurance because of past or future lawful travel. The law does allow a life insurer to exclude or limit coverage of specific lawful travel, or to charge a differential rate for such coverage, when bona fide statistical differences in risk or exposure have been substantiated.¹⁰

The state which has addressed this issue most recently is California. Although California's law is the same as Washington's in what it expressly prohibits, it also clarifies that it does not prohibit an insurer from excluding or limiting coverage under a life insurance policy, or refusing to offer life insurance, based upon lawful travel, or from charging a different rate for that coverage, when that action is based upon sound actuarial principles or is related to actual and reasonably expected experience.¹¹

Changes Proposed by the Bill

The bill prohibits a life insurance company from refusing to insure, refusing to continue to insure, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely for reasons associated with an applicant's or insured's past or future lawful travel experiences.¹² The effect of the bill is that a life insurance company would not be allowed to base its coverage decision solely on an applicant's past or future travel activities, but it would not be precluded from taking into consideration other underwriting factors.

The bill also authorizes the Financial Services Commission to adopt rules to implement the law and to provide limited exceptions based upon emergencies and consistent with public policy.

C. SECTION DIRECTORY:

Section 1. Creates a new undesignated section of Florida law. Provides the purpose of the act and the prohibition against certain actions by life insurers regarding an applicant or policyholder's past or future lawful travel plans. Provides for rulemaking.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁸State of New York Insurance Department, Opinion issued by the Office of General Counsel Re: Life Insurance Underwriting, filed on May 25, 2005, available at <http://www.ins.state.ny.us/rg050526.htm>, viewed on January 19, 2006.

⁹ House Bill 617(Maryland), 2005 Regular Session bill information for "Life Insurance Freedom to Travel Act," current as of 12/15/05. Illinois law found at 215 IL. CS 5/236 (2005).

¹⁰ "An act relating to prohibiting discrimination in life insurance based on lawful travel destinations," Engrossed House Bill 1561, State of Washington, 59th Legislature (2005).

¹¹ Cal. Ins. Code s. 10111.7 (2005).

¹² This bill only addresses lawful travel experiences. It does not change the law regarding illegal travel to such countries as Cuba or North Korea.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures: None

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unable to be determined.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other: None

B. RULE-MAKING AUTHORITY:

Provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Reaction by the Insurance Industry

The sponsor of the bill submitted a letter for the record from Florida Combined Life Insurance Company, a subsidiary of Blue Cross and Blue Shield of Florida and licensed to conduct business in Florida, Georgia, South Carolina and Alabama, in support of the bill. According to the insurer, the bill promotes good public policy and protects individuals' right to travel.¹³

¹³ Letter to Representative Eleanor Sobel from Terri Schmidt, President, Florida Combined Life Insurance Company, December 21, 2005, on file with the Insurance Committee.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 26, 2006, the Insurance Committee adopted one amendment to the bill. The amendment authorized the Financial Services Commission to adopt rules to implement the law and to provide limited exceptions based upon emergencies and consistent with public policy.

As amended, the bill was reported favorably as a committee substitute.

HB 299

2006
CS

CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to travel-limited life insurance coverage; providing a purpose; specifying prohibited activities by insurers for life insurance coverage relating to lawful travel experiences; authorizing the Financial Services Commission to adopt rules and provide certain limited exceptions based on emergency conditions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The purpose of this act is to prohibit a life insurance company from refusing to insure or refusing to continue to insure an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely for reasons associated with an applicant's or insured's past or future lawful travel experiences.

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23 (2) An insurer may not refuse to insure or refuse to
24 continue to insure an individual, limit the amount, extent, or
25 kind of life insurance coverage available to an individual, or
26 charge an individual a different rate for the same coverage
27 solely for reasons associated with an applicant's or insured's
28 past or future lawful travel experiences.

29 (3) The Financial Services Commission may adopt rules
30 necessary to implement this section and may provide for limited
31 exceptions that are based upon national or international
32 emergency conditions that affect the public health, safety, and
33 welfare and that are consistent with public policy.

34 Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.1 (for drafter's use only)

Bill No. 299 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Transportation & Economic
Development Appropriations Committee
Representative(s) Sobel offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. This act may be cited as "The Freedom To Travel
Act."

Section 2. Paragraph (dd) is added to subsection (1) of
section 626.9541, Florida Statutes, to read:

626.9541 Unfair methods of competition and unfair or
deceptive acts or practices defined.--

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
ACTS.--The following are defined as unfair methods of
competition and unfair or deceptive acts or practices:

(dd) Life insurance limitations based on past foreign
travel experiences or future foreign travel plans.--

1. An insurer may not refuse life insurance to, refuse to
continue life insurance of, or limit the amount, extent, or kind
of life insurance coverage available to an individual based

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.1 (for drafter's use only)

solely on the individual's past lawful foreign travel experiences.

2. An insurer may not refuse life insurance to, refuse to continue life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual's future lawful travel plans unless the insurer can demonstrate and the Office of Insurance Regulation determines that insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel.

3. The commission may adopt rules necessary to implement this paragraph and may provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety and welfare and that are consistent with public policy.

Section 3. This act shall take effect July 1, 2006.

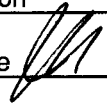

===== T I T L E A M E N D M E N T =====

Remove everything before the enacting clause
and insert:

A bill to be entitled
An act relating to travel-limited life insurance coverage;
amending s. 626.9541, F.S.; specifying prohibited activities by
insurers relating to lawful travel; providing exceptions;
authorizing the adoption of rules by the Financial Services
Commission to implement this act and allow for limited
exceptions based on emergencies and public policy; providing an
effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7079 PCB TR 06-03 Highway Safety
SPONSOR(S): Transportation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee	14 Y, 0 N, w/CS	Thompson	Miller
1) Transportation & Economic Development Appropriations Committee		McAuliffe 	Gordon 
2) State Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7079 contains numerous changes to highway safety and motor vehicle laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Examples of major provisions in the bill include:

- Grants DHSMV the authority to make rules regarding settlement or compromise of taxes, penalties or interests; and authorizes DHSMV to enter into agreements for scheduling payments of taxes and penalties;
- Clarifies that "Motorized scooters" and "miniature motorcycles" are not "street legal" and provides the public with better notice of their legal status through sales disclosure requirements;
- Requires motorcycle riders under 21 years old to display a license plate unique in design and color; requires that the owner must prove when registering a motorcycle that they have obtained a motorcycle endorsement on their driver license; and requires every first time applicant for licensure to operate a motorcycle to provide proof of completion of a motorcycle safety course;
- Allows All-Terrain Vehicles (ATV's) to be operated by a licensed driver or a minor under the supervision of a licensed driver on un-paved roadways where the posted speed limit is less than 35 mph;
- Brings intrastate hours-of-service requirements for commercial motor carriers into compliance with federal tolerance guidelines, and provides for changes recently enacted into federal law for utilities and agricultural transportation;
- Allows certain forestry equipment to operate on public roads between one point of harvest to another;
- Increases penalties for speeding 30 miles per hour over the posted speed limit, red light violations resulting in a crash and failure to secure loads while traveling on the public roads and highways;
- Allows veterans of recent military conflicts to display a tag that shows their service in Operation Iraqi Freedom and Operation Enduring Freedom;
- Revises the definitions of driver's license, identification card, and temporary driver license or temporary identification card to comply with federal requirements;
- Clarifies certain law enforcement and judicial procedures for suspension of driver licenses for driving with unlawful blood or breath alcohol level and the review of such suspensions.

Some of the bill's provisions are technical or administrative in nature and will have no fiscal impacts. Some of the provisions are expected to have an indeterminate fiscal impact on state and local governments and on the private sector. For details, see the FISCAL COMMENTS section of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—HB 7079:

- The bill gives DHSMV the authority to make rules regarding settlement or compromise of taxes, penalties or interest;
- The bill requires that upon original registration of any motorcycle, motor driven cycle or moped the owner must prove they have obtained necessary endorsement on the driver license;
- The bill requires every first time applicant for licensure to operate a motorcycle to provide proof of completion of the motorcycle safety course.
- The bill gives law enforcement agencies the authority to appeal any decision of DHSMV invalidating a driver license suspension by a petition for writ of certiorari to the circuit court in the county where a formal review was conducted.

Promote Personal Responsibility—HB 7079:

- The bill increases driver license points, requires a mandatory hearing, and doubles the fine for a second offense for exceeding the posted speed limit by 30 miles per hour or more;
- The bill increases the points for a red light violation resulting in a crash to six points (same as speeding resulting in a crash);
- The bill increases the fines for failing to secure loads from \$100 to \$200, and increases the driver's license suspension for a second offense from a minimum of 180 days and a maximum of 1 year to a minimum of one year and a maximum of two years;

Safeguard Individual Liberty—HB 7079:

- The bill provides for the operation of "ATV's" by licensed drivers and minors under the supervision of a licensed driver on unpaved roadways where the speed limit is 35 mph or less;
- The bill removes the requirement for a franchise motor vehicle dealer to attend eight hours of continuing education when applying for an initial license;

B. EFFECT OF PROPOSED CHANGES:

Settlement or Compromise of Taxes, Penalty or Interest

Background

In 1981 the legislature passed HB 439¹ transferring the taxation of motor fuel and special fuel from the Public Service Commission to the Department of Revenue. In 1987 the legislature passed HB 761² transferring the fuel use tax functions of the Department of Revenue to DHSMV. Since the transfer of the administration of Chapter 207, F.S., to DHSMV from the Department of Revenue, DHSMV's authority to settle or compromise assessments and enter into stipulation agreements has been uncertain. The bill addresses three areas related to taxes, penalties and interest assessed by DHSMV: record-keeping requirements; informal settlement conferences; and scheduling payments.

¹ Chapter 81-151, Laws of Florida

² Chapter 87-198, Laws of Florida

Records

Section 207.008, F.S., requires each registered motor carrier to maintain records and papers as required by the Department of Revenue for the administration of the settlement or compromise of taxes, penalty or interest. Motor carriers are to preserve these records until expiration of the time within which the Department of Revenue is able to make an assessment with respect to that tax pursuant to Florida law³. The bill amends s. 207.008, F.S., to provide that records must be maintained for four years.

Informal Conferences

Section 207.021, F.S., only allows DHSMV to settle or compromise penalties or interest imposed under Chapter 207, F.S., using the provisions of Section 213.21, F.S., which relates to the Department of Revenue. There is no specific authority in Chapter 207, F.S., for DHSMV to conduct informal conferences for the resolution of disputes arising from the assessment of taxes, penalties, or interest.

The bill grants DHSMV statutory rulemaking authority regarding settlement or compromise of chapter 207, F.S., taxes, penalties or interest. The bill also specifies that during any proceeding arising under this section, the motor carrier has the right to be represented at and record all procedures at the motor carrier's expense.

The bill authorizes the executive director of DHSMV or his or her designee to enter into closing agreements with a taxpayer to settle or compromise tax liabilities. These agreements are to be in writing and prohibit further assessments by DHSMV for taxes settled and prohibit the taxpayer from seeking recovery of amounts paid under terms of the agreement. A taxpayer's liability for chapter 207, F.S., tax or interest may be compromised by DHSMV on the grounds of doubt as to liability for or the ability to collect the tax or interest. The bill specifies that doubt as to the liability of a taxpayer for tax and interest exists if the taxpayer reasonably relied on a written determination of DHSMV. A taxpayer's liability can only be settled or compromised to the extent allowable under International Fuel Tax Agreement (IFTA)⁴. A taxpayer's liability for penalties may be settled or compromised if DHSMV determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. DHSMV is also authorized to enter into agreements for scheduling payments of taxes, penalties, and interest resulting from audit assessments.

The International Registration Plan

The International Registration Plan (IRP) is a program for licensing commercial vehicles in interstate operations among member jurisdictions. The member jurisdictions of IRP are all states (except Alaska and Hawaii), the District of Columbia, and the Canadian provinces (except Yukon and Northwest Territory).

Under this program, an interstate carrier files an apportioned registration application in the state or province where the carrier is based (the base jurisdiction). The fleet vehicles and the miles traveled in each state are listed on the application. The base jurisdiction collects the full license registration fee. They distribute the fees to the other jurisdictions based on the percentage of miles the carrier will travel, or has traveled, in each jurisdiction. The base jurisdiction also issues a license plate showing the word "apportioned" and a cab card showing the jurisdictions and weights for which the carrier has paid fees.

Section 320.405, F.S., relating to the IRP, does not authorize DHSMV to enter into agreements for scheduling payments of taxes and penalties due to DHSMV as a result of audit assessments issues.

³ s. 95.091(3), F.S.

⁴ s. 207.0281(1), F.S.

The bill would allow DHSMV to enter into agreements for scheduling payments of such taxes and penalties due to the department as a result of audit assessments issued under this section.

Motorized Scooters and Miniature Motorcycles

Background

Motorized scooters are two-wheel vehicles, equipped with either a small two-cycle gasoline engine or an electric motor and a battery. To operate within the letter of the law some manufacturers are retrofitting these scooters with electric motors and kits. The gasoline-powered scooters usually cost between \$400 and \$1,300. Electric scooters range from under \$200 to about \$1,000.

The U.S. Consumer Product Safety Commission (CPSC) is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. A new year-long study released by CPSC⁵ finds there were an estimated 10,000 emergency room injuries involving powered scooters nationally from July 2003 through June 2004.

Chapter 322, F.S., relating to drivers' licenses, defines the term "motor vehicle" as any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles. This definition requires the operator of any motor vehicle including motorized scooters, operating on the public roadways to have a class E driver's license.

Section 320.02, F.S., relating to motor vehicle registration, provides that every owner or person in charge of a motor vehicle which is operated or driven on the roads of this state must register the vehicle in this state. While that chapter requires any motor vehicle to be registered, s. 320.08, F.S., does not provide a license tax classification for motorized scooters. DHSMV has therefore advised that since such vehicles may not be registered, they may not be operated on the public streets and roads.

Section 316.1995, F.S., provides that no person may drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway and provides penalties. Motorized scooters are not exempted from the definition of "vehicle" in section 316.003(75), F.S., which defines the term as every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. Thus, motorized scooters appear to be prohibited from operating on sidewalks.

Section 316.003(83), F.S., defines electric personal assistive mobility devices as any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. Electric personal assistive mobility devices are not vehicles as defined in this section. Section 316.2068, F.S., relating to electric personal assistive mobility devices, allows such devices to be operated on certain roads and on sidewalks without a driver's license and without being registered.

The bill creates s. 316.2128, F.S., to provide clarification that motorized scooters and miniature motorcycles are not street legal and to provide potential buyers with notice of these vehicles' current legal status. Section 316.2128, F.S., provides the following:

- Prohibits the operation of motorized scooters and miniature motorcycles on public roads, streets, or sidewalks and such vehicles may not be registered as a motor vehicle,

⁵ CONSUMER PRODUCT SAFETY REVIEW Fall 2005; VOL. 10, NO. 2: http://www.cpsc.gov/cpscpub/pubs/cpsr_nws38.pdf

- Requires the operator of motorized scooters and miniature motorcycles to keep proof of ownership in the form of a receipt, sales invoice, bill of sale, or other written documentation in his or her possession at all times;
- Prohibits a person from knowingly permitting his or her child or ward under 16 or between the ages of 16 and 18 years old to drive a motorized scooter or miniature motorcycle in violation of this section;
- Provides that a violation is a non-criminal traffic infraction punishable as a moving violation. A person violating this provision would be subject to a \$60 fine plus applicable fees and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from \$112.50 to \$118.50, and an assessment of three points against the driver's license; and
- Requires a person selling "motorized scooters" and "miniature motorcycles" to display a notice that these vehicles are not legal to operate on roads or sidewalks. This notice and a copy of the statute must be provided to the consumer prior to purchase. Violations of the sales disclosure provision are punishable under the "Florida Deceptive and Unfair Trade Practices Act"⁶ and are liable for a civil penalty of not more than \$10,000 for each violation plus applicable court costs and attorney fees.

The bill amends s. 316.003, F.S., to make the following changes:

- Includes motorized scooters in the definition of "motor vehicle." This change will subject motorized scooters to the traffic laws that apply throughout the state and counties and uniform traffic ordinances that apply in all municipalities;
- Excludes miniature motorcycles from the definition of motorcycle so that miniature motorcycles will not be classified as street legal motorcycles;
- Clarifies the definition of motorized scooter to inform the public that because of its small size, its design or lack of required safety equipment, or other non-compliance with federal regulations these scooters are not eligible for a manufacturer's certificate of origin or for registration; and
- Creates the term "miniature motorcycle" and defines it as any vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and which because of its small size, its design or lack of required safety equipment, or other non-compliance with federal regulations, is not eligible for a manufacturer's certificate of origin or for registration as a motorcycle. The term does not include off-highway vehicles. This definition will clarify that these vehicles are not "street legal" and will provide the public with notice of their legal status.

Motorcycle Riders

Equipment

The National Highway Traffic Safety Administration has a legislative mandate under Title 49 of the United States Code, Chapter 301, Motor Vehicle Safety, to issue Federal Motor Vehicle Safety Standards (FMVSS) and Regulations to which manufacturers of motor vehicle and equipment items must conform and certify compliance. FMVSS Standard No. 218, establishes minimum performance requirements for helmets designed for use by motorcyclists and other motor vehicle users.

Currently, s. 316.211, F.S., provides the following requirements for motorcycle and moped riders:

- A person is not to operate or ride on a motorcycle unless the person is properly wearing protective headgear which complies with FMVSS Standard 218;
- A person may not operate a motorcycle unless the person is properly wearing an eye-protective device of a type approved by DHSMV;

⁶ S. 501.201, F.S.

- These regulations do not apply to persons riding within an enclosed cab or 16 years of age or older and operating or riding a motorcycle powered by a motor with a displacement of 50 cubic centimeters or less or not rated in excess of two brake horsepower and which is not capable of propelling itself at a speed greater than 30 miles per hour on level ground;
- A person over 21 years of age is allowed to operate or ride a motorcycle without wearing protective headgear if they are covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle.
- A person under 16 years of age may not operate or ride a moped unless the person is properly wearing protective headgear which complies with FMVSS Standard 218; and
- DHSMV must make available a list of approved protective headgear, and the list must be provided on request.

The bill would amend s. 316.211, F.S., to require, effective January 1, 2007, that motorcycles registered to persons who have not attained 21 years of age must display a license plate that is unique in design and color. Because the helmet exemption applies to riders over 21, this would allow for better enforcement of the state's helmet law requirements.

Registration

Currently, under s. 320.02, F.S., every owner or person in charge of a motor vehicle operated or driven on the roads of this state is required to register the vehicle in this state. The owner or person in charge must apply to DHSMV or to its authorized agent for registration on a form prescribed by DHSMV.

The bill amends s. 320.02, F.S., to provide that before an original registration of a motorcycle, motor driven cycle or moped can be issued, the owner must present proof of successfully completing a test of his or her knowledge concerning the safe operation of the motorcycle or moped and a test of his or her driving skills on such vehicle. This provision will become effective January 1, 2007.

Examination of Applicants

Currently, s. 322.12, F.S., requires that every first-time applicant for licensure to operate a motorcycle who is under 21 years of age must provide proof of completion of a motorcycle safety course, as provided in 322.0255, F.S., before the applicant is licensed to operate a motorcycle. The bill amends this provision and would require that regardless of age, all first-time applicants for licensure to operate a motorcycle must provide proof of completion of a motorcycle safety course. This provision will become effective July 1, 2008.

According to DHSMV, fatalities among motorcyclists have risen in Florida. Statistics show that within the last two years, there have been no fatalities among those riders completing the Florida Motorcycle Safety Education Program. These changes to licensing and registration laws are intended to reduce crashes among motorcyclists.

All-Terrain Vehicles (ATV's)

Operation

Current law, s. 316.2074, F.S., does not allow all-terrain vehicles to be operated on public roads, streets, or highways, except as permitted by a managing state or federal agency. All-terrain vehicles are defined in s. 316.2074, F.S., as any motorized off-highway vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator with no passenger. The definition of "all-terrain vehicle" also includes any "two-rider ATV" as defined in s. 317.0003, F.S.

According to the Division of Forestry the speed limit on all roads within forests is 30 mph unless posted otherwise. These speed limits are based on road design and basic knowledge of maximum safe speeds within each park. The T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act, Chapter 261, F.S. provides the State of Florida with a set of guidelines to follow for maintaining and providing state lands for Off-Highway Motorcycle and All-Terrain Vehicle users. This act does not allow all-terrain vehicles to be operated on public roads, streets, or highways, except as permitted by a managing state or federal agency.

Section 316.2074, F.S., also provides the following related to ATV's:

- No person under 16 years of age is allowed to operate, or ride an all-terrain vehicle unless the person wears an approved safety helmet and eye protection;
- If a crash results in the death of any person or injury of any person which results in treatment of the person by a physician, the operator of each all-terrain vehicle involved in the crash must give notice of the crash as required by s. 316.066, F.S.;
- An all-terrain vehicle having four wheels may be used by police officers on public beaches designated as public roadways for the purpose of enforcing the traffic laws of the state. All-terrain vehicles may also be used by the police to travel on public roadways within 5 miles of beach access only when getting to and from the beach;
- An all-terrain vehicle having four wheels may be used by law enforcement officers on public roads within public lands while in the course and scope of their duties; and
- A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318, F.S.

The bill creates s. 316.2123, F.S., allowing "ATV's" to be operated by a licensed driver or a minor under the supervision of a licensed driver on un-paved roadways where the posted speed limit is less than 35 mph. The drivers are required to provide proof of ownership if requested by law enforcement.

Dump Trucks

Taillamps

Currently s. 316.221, F.S., relating to taillamps, requires taillamps or separate lamps to be constructed and placed to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, must be wired to light up whenever the headlamps or auxiliary driving lamps are lighted. The bill exempts dump trucks and vehicles with dump bodies from the requirements of this section relating to illumination of license plates.

License Plates

Section 320.0706, F.S., requires the owner of any commercial truck of gross vehicle weight of 26,001 pounds or more to display the registration license plate on both the front and rear of the truck in conformance with all the requirements of s. 316.605, F.S. However, the owner of a truck tractor is required to display the registration license plate only on the front of such vehicle. Current law does not provide for a height requirement for the display of license plates on commercial trucks of gross vehicle weight of 26,001 pounds or more.

The bill amends s. 320.0706, F.S., allowing the owners of dump trucks to place the rear license plate on the gate no higher than 60 inches from the ground to the top of the license plate to allow for better visibility.

Motor Carrier Compliance

Hours of Service

The federal Motor Carrier Safety Assistance Program (MCSAP) provides funding to all the states, territories and the District of Columbia for state enforcement of the Federal Motor Carrier Safety Regulations (FMCSRs). The purpose of the MCSAP financial assistance to states is to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles (CMVs).

To be eligible for MCSAP funding, a state must adopt and enforce compatible regulations identical for interstate transportation and within the federal tolerance guidelines⁷ for intrastate transportation. The federal tolerance guidelines set forth limited deviations from the FMCSRs that are allowed in Florida's laws and regulations. These variances apply only to motor carriers, CMV drivers and CMVs engaged in intrastate commerce and are not subject to federal jurisdiction.

According to federal law, 49 C.F.R. 350.345, 100 percent funding for all states may be granted if the following criteria are met:

- If the state law achieves the same purpose as the corresponding federal regulations;
- If the additional variances do not apply to interstate commerce; and
- If the additional variances are not likely to have an adverse impact on safety.

Florida currently receives 50% (\$3.3 million) of its allocated federal funding (\$6.6 million) through MCSAP. The state does not receive 100 percent MCSAP funding because it is not in compliance with the federal hours of service regulations for intrastate truck drivers.

Sections 316.302, 316.003 and 316.515, F.S., provide the following variances that are not consistent with the safety goals of the U.S. Department of Transportation:

- All intrastate drivers (except hazardous materials drivers) may drive 15 hours (12 allowed under the tolerance guidelines);
- Citrus growers and forestry drivers are exempt from Florida's maximum driving time regulations, which are incompatible with federal allowances;
- 200-mile radius drivers are exempt from log requirements (150 allowed by the tolerance guidelines);
- Drivers can drive 72 hours in seven days, or 84 hours in eight days (70 hours in seven days and 80 hours in eight days are allowed by the tolerance guidelines); This restarts every 24 hours;
- Drivers of farm or forest products and unprocessed agricultural products during harvest season are exempt from the federal requirements relating to driver qualification, hours of service, inspection, repair and maintenance regulations.⁸
- Vehicles less than 26,000 pounds gross vehicle weight ratio, transporting petroleum products are exempt from safety regulations including driver qualification, hours of service, inspection, repair and maintenance regulations.⁹

The bill amends ss. 316.302, 316.003 and 316.515, F.S., to bring intrastate hours-of-service requirements into compliance with federal tolerance guidelines, and to provide for changes recently enacted into federal law for utilities and agricultural transportation. The bill also contains the following changes:

- Deletes the exemption from federal requirements relating to driving and resting, changing the time limit a commercial motor vehicle driver may drive in a 24 hour period from 15 hours to the federally required 12 hours;
 - This provision does not apply to utility service vehicles.
- Changes the weekly limit of on duty hours from 72 hours to 70 hours in any period of seven consecutive days, and from 84 to 80 hours in any period of eight consecutive days;

⁷ 49 C.F.R. 350.341

⁸ 49 C.F.R. 391, 395, 396

⁹ 49 C.F.R. 391, 395, 396

- This provision does not apply to drivers operating solely within the state and transporting agricultural commodities or farm supplies or to utility service vehicles.
- Updates the reference to current (October 1, 2005) federal rules and regulations applicable to commercial motor vehicles.

CDL Vision Exemption

Currently, s. 316.302, F.S., contains a grandfather clause that exempts a person who was a regularly employed driver of a commercial motor vehicle on July 4, 1987, and whose driving record shows no traffic convictions, pursuant to s. 322.61, F.S., during the two-year period immediately preceding the application for the commercial driver's license, and who is otherwise qualified as a driver under federal law¹⁰, and who operates a commercial vehicle in intrastate commerce only, from requirements of the federal law relating to minimum vision requirements in both eyes. However, such operators are still subject to the requirements of ss. 322.12 and 322.121, F.S., relating to the examination of driver license applicants. As proof of eligibility, such driver is to have in his or her possession a physical examination form dated within the past 24 months.

The bill would allow a person with normal vision in only one eye whose driving record shows no traffic convictions, pursuant to s. 322.61, F.S., during the two-year period immediately preceding the application for the commercial driver's license, and who is otherwise qualified as a driver under 49 C.F.R. part 391, and who operates a commercial vehicle in intrastate commerce only, to be exempt from the vision requirements of 49 C.F.R. part 391, subpart E, s. 391.41(b)(10). The driver would have to have in his or her possession a physical examination form dated within the past 24 months. This change would make the state exemption consistent with federal waiver provisions.

Other Commercial Motor Vehicle Provisions

Currently s. 316.003, F.S., defines saddle mounts as an arrangement whereby the front wheels of one vehicle rest in a secured position upon another vehicle and all of the wheels of the towing vehicle are upon the ground. The bill allows such towing combinations to include one full mount which is a smaller transport vehicle that is placed completely on the last towed vehicle.

Under current law s. 316.515, F.S., relating to maximum width, height, and length of commercial motor vehicles, provides that an automobile transporting new or used trucks may use a "saddle mount" if the overall length does not exceed 75 feet and no more than three saddle mounts are in tow. The bill increases the overall allowable length for saddle mount combinations to 97 feet. The bill allows these vehicles transporting new or used trucks to include one "full mount," bringing the state law in compliance with federal tolerance guidelines.

Forestry Equipment

Section 316.515, F.S., currently only allows the following machinery to operate on public roads from one point of production to another:

- Straight trucks,
- Agricultural tractors,
- Cotton module movers, not exceeding 50 feet in length,
- Any combination of up to and including three implements of husbandry including the towing power unit,
- Any single agricultural trailer with a load thereon,
- Agricultural implements attached to a towing power unit not exceeding 130 inches in width, and
- A self-propelled agricultural implement or an agricultural tractor not exceeding 130 inches in width.

¹⁰ 49 C.F.R. part 391

This section only allows the above listed machinery to operate on public roads from one point of production to another for the following purposes:

- Transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage,
- Returning to the point of production,
- Moving the tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler.

The bill amends s. 316.515, F.S., to allow equipment used exclusively for the purpose of harvesting forestry products, not exceeding 136 inches in width and which is not capable of speeds exceeding 20 miles per hour, to operate on public roads to get from one point of harvest to another point of harvest not to exceed 10 miles, by a person engaged in the harvesting of forest products. These vehicles must be operated in accordance with all safety requirements prescribed s. 316.2295(5) and (6), F.S., relating to slow moving vehicle emblems on farm tractors, farm equipment and implements of husbandry.

Driver Education Program Surcharge

Currently s. 318.1215, F.S., (the "Dori Slosberg Driver Education Safety Act") allows county commissioners to adopt an ordinance requiring the clerk of the court to collect an additional \$3 with each civil traffic penalty. The funds are to be used to fund driver education programs in public and nonpublic schools. The ordinance must provide for the board of county commissioners to administer the funds for direct educational expenses and must prohibit using the funds for administration. The bill amends s. 318.1215, F.S., to increase the amount of money that a county may collect with each traffic penalty from \$3 to \$5. Currently 53 counties are collecting the \$3 surcharge.

Traffic Control—Speeding

Background on Speeding Violations

According to law enforcement, the number of speeders traveling in excess of 30 miles per hour over the speed limit on limited access highways throughout Florida is increasing. The maximum penalties for speeding are \$250 and four points on the driver's license. In addition to the \$250 statutory base fine, court costs and fees amount to \$52.50 making the speeding penalty \$302.50. Optional surcharges could add as much as \$24 to this. Florida Highway Patrol Troopers are writing 20 tickets a month for triple digit speeds on I-4, five tickets a month on state Road 417, and 20 to 30 tickets each week on Florida's Turnpike south of St. Cloud. The accidents caused by these excessive speeding violations are more severe than accidents that involve motor vehicles traveling at or around the speed limit.

Neighboring states have taken measures to inhibit the most dangerous of unlawful speed violators. Increased speeding fines and reckless driving charges have been instituted in these states to allow for stricter penalties when speeds reach untenable heights. Officers interviewed also suggested that more effort be made to revoke or suspend the licenses of motorists who drive at such high rates of speed. The following changes to speeding penalties could increase traffic safety by deterring excessive speeding.

Mandatory hearings

Current law s. 318.14, F.S., relating to noncriminal traffic infractions, provides that a person who does not hold a commercial driver's license and who is issued a citation for speeding may elect to pay the fine without appearing before a hearing officer or judge and to attend a basic driver improvement course approved by DHSMV. In such a case, adjudication is withheld, points as provided by s. 322.27, F.S., are not assessed, and the civil penalty is reduced by 18 percent. A person is allowed to attend a driver improvement course in lieu of appearing before a hearing officer or judge once every twelve months. A person may make no more than five total elections under this subsection.

Section 318.19, F.S., provides that citations for the following infractions require a mandatory hearing:

- Any infraction which results in a crash and causes the death of another person;
- Any infraction which results in a crash that causes "serious bodily injury" of another person;
- Any infraction of failing to stop for a school bus; or
- Any infraction of failing to secure loads on vehicles.

The bill amends s. 318.14, F.S., to provide that any person who is issued a citation for exceeding the posted speed limit by 30 miles per hour or more may not attend a driver improvement course in lieu of appearing before a hearing officer or judge. The bill also amends s. 318.19, F.S., requiring a mandatory hearing for a citation of exceeding the posted speed limit by 30 miles per hour or more.

Speeding Fines

Currently s. 318.18, F.S., relating to penalties for speeding, provides that for moving violations involving unlawful speed, the fines are as follows:

For speed exceeding the limit by:	Fine:
1-5 m.p.h.	Warning
6-9 m.p.h.	\$ 25
10-14 m.p.h.	\$100
15-19 m.p.h.	\$125
20-29 m.p.h.	\$150
30 m.p.h. and above	\$250

The bill amends s. 318.18, F.S., to provide that a person who is found guilty of a second violation of exceeding the posted speed limit by 30 miles per hour or more within a 12-month period must pay a fine double the amount listed in the table above. Also, the bill defines "conviction" for these violations as a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, notwithstanding that adjudication was withheld.

Florida's Point System

Section 322.27, F.S., establishes a system of points that are assessed against a driver's license when a person is convicted of violating certain motor vehicle laws. The point system is used for the evaluation and determination of the continuing qualification of a person to operate a motor vehicle. The DHSMV is authorized to suspend the license of any person if the licensee has been convicted of the violation of motor vehicle laws amounting to 12 or more points within a 12-month period. The suspension will be for a period of not more than one year. The point system statute has the following provisions:

The point system has, as its basic element, a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving—four points.
2. Leaving the scene of a crash resulting in property damage of more than \$50—six points.
3. Unlawful speed resulting in a crash—six points.
4. Passing a stopped school bus—four points.
5. Unlawful speed:
 - a. Not in excess of 15 miles per hour of lawful or posted speed—three points.
 - b. In excess of 15 miles per hour of lawful or posted speed—four points.
6. All other moving violations (including parking on a highway outside the limits of a municipality)—three points.
7. Any moving violation, excluding unlawful speed, resulting in a crash—four points.
8. Dumping litter in an amount exceeding 15 pounds, which involves the use of a motor vehicle—three points.

9. Driving during restricted hours—three points.
10. Violation of curfew—three points.
11. Open container as an operator—three points.
12. Child restraint violation—three points.

When a licensee accumulates 12 points within a 12-month period, the period of suspension will be for not more than 30 days. When a licensee accumulates 18 points within an 18-month period, the suspension will be for a period of not more than three months. When a licensee accumulates 24 points within a 36-month period, the suspension will be for a period of not more than one year.

The bill increases the number of points assessed for a conviction of exceeding the posted speed limit by 30 miles per hour or more from four points to six points. For purposes of speeding violations in excess of 30 miles per hour over the posted speed limit, the bill defines “conviction” as a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, notwithstanding that adjudication was withheld.

Traffic Control—Red Light Violations

According to the Federal Highway Administration (FHA), in 1999 there were 92,000 automobile crashes caused by running red lights in United States urban areas.¹¹ These accidents resulted in 90,000 injuries and 950 fatalities with estimated social costs, including property damage, injury, lost time and death, exceeding \$7 billion. The FHA also has done surveys in which 55.8% of Americans admit to running red-lights and 99.6% of drivers fear being hit by another driver running a red light.

Section 322.27 (3), F.S., establishes a system of points that are assessed against a driver’s license when a person is convicted of violating certain motor vehicle laws. It provides that for a violation of a traffic control signal device 4 points are assessed to the driver’s license. The point system is used for the evaluation and determination of the continuing qualification of a person to operate a motor vehicle. The provisions of the point system detailed above are under the heading, Florida’s Point System.

Under current law, it is possible that a red light runner could cause a crash seriously injuring someone and suffer no more than a \$60 fine and a brief suspension of driving privileges. The bill amends s. 322.27, F.S., to assess 6 points on the driver’s license for a conviction of a red light violation that results in a crash. This is the same number of points assessed for crashes resulting from speeding.

Failing to Secure Loads

Under current law, s. 316.520, F.S., a vehicle may not be driven or moved on any highway unless the vehicle is constructed or loaded to prevent its load from dropping, shifting, leaking, blowing, or escaping. Also, it is the duty of the owner and driver, of vehicles hauling dirt, sand, lime rock, gravel, silica, trash, garbage, inanimate objects, or material that could fall or be blown from the vehicle, to prevent such materials from escaping by covering and securing the load with a close-fitting tarpaulin, cover or a load securing device meeting the requirements of 49 C.F.R. s. 393.100 or a device designed to reasonably ensure that cargo will not shift, or fall from the vehicle.

Section 318.18, F.S., provides the following penalties for violations of s. 316.520(1) or (2), F.S., failing to secure loads:

- One hundred dollars for a violation of s. 316.520(1) or (2), F.S., relating to failing to secure loads on vehicles [covering and securing the load with a tarp, cover or other load securing device is considered compliance with this section;
- For a second or subsequent adjudication within a period of 5 years, the DHSMV must suspend the driver’s license of the person for not less than 180 days and not more than one year.

¹¹ Inadvertent Red Light Violations: An Economic Analysis, Craig A. Depken, II; Department of Economics; University of Texas at Arlington; Arlington, Texas 76019-0479.

The bill amends s. 318.18, F.S., providing for an increase in penalties for failing to secure loads on vehicles. The bill doubles the \$100 fine making it \$200 plus applicable fees and court costs and increases the driver's license suspension for a second offense from a minimum of 180 days and a maximum of one year to a minimum of one year and a maximum of two years. This change could decrease traffic accidents caused by unsecured loads on vehicles and deter violations for failing to secure loads on vehicles.

Police Vehicles—Title Branding

Section 319.14, F.S., prohibits the sale, or exchange of any vehicle that has been licensed, registered, or used as a taxicab, police vehicle, or short-term-lease vehicle, or a vehicle that has been repurchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681 relating to motor vehicle sales warranties or the "lemon law," until DHSMV has stamped in a conspicuous place on the certificate of title of the vehicle, or its duplicate, words stating the nature of the previous use of the vehicle or the title has been stamped "Manufacturer's Buy Back" to reflect that the vehicle is a nonconforming vehicle. According to some law enforcement agencies, branding the title of non-pursuit vehicles as police vehicles reduces the resale value of these vehicles.

The bill amends the definition of "police vehicles" in s. 319.14, F.S., to include the words "marked and outfitted as a pursuit vehicle" so that only pursuit vehicles would have to be issued a title branded as a police vehicle. According to some law enforcement agencies this provision would increase the resale value of non-pursuit vehicles owned by the law enforcement agency.

Operation Iraqi Freedom and Operation Enduring Freedom License Plates

Currently an owner or lessee of a private vehicle who is a resident of the state and an active or retired member of the Florida National Guard, a survivor of the attack on Pearl Harbor, a recipient of the Purple Heart medal, or an active or retired member of any branch of the United States Armed Forces Reserve, may apply to DHSMV and be issued either a "National Guard," "Pearl Harbor Survivor," "Combat-Wounded Veteran," or "U.S. Reserve" license plate.

The bill amends s. 320.089, F.S., to create Operation Iraqi Freedom and Operation Enduring Freedom license plates and qualifies Operation Iraqi Freedom and Operation Enduring Freedom veterans as the exclusive recipients of these plates. There would be no additional charge for the new license plate.

Motor Vehicle Dealers

Continuing Education & Training

Currently s. 320.27, F.S., requires all independent motor vehicle dealers to complete eight hours of continuing education prior to filing the renewal forms to DHSMV. The continuing education is to include at least two hours of legal or legislative issues, one hour of department issues, and five hours of relevant motor vehicle industry topics. The education may be provided in a classroom setting or by correspondence. This section also requires that for each initial license application, franchise motor vehicle dealers or an employee must attend an eight hour training and information seminar. The seminar includes, but is not limited to, dealer requirements, which include bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and other information that will promote good business practices.

The bill would require only independent motor vehicle dealers who have been in business for less than five years to complete the continuing education listed in s. 320.27, F.S. This change would limit the continuing education course requirement to only those independent dealers who are relatively new to the business. The bill would also delete the current provision requiring franchise motor vehicle dealers to attend an eight hour training and information seminar for each initial license application.

Low Speed Vehicles

Currently, s. 320.27, F.S., relating to motor vehicle dealers, defines "motor vehicle" as any motor vehicle of the type and kind required to be registered and titled under chapters 319 and 327, except a recreational vehicle, moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, or mobile home.

The bill amends s. 320.27, F.S., by adding low speed vehicles to the list of vehicles excepted from the definition of "motor vehicles" for motor vehicle dealer licensing purposes. Low speed vehicles are defined in s. 320.01, F.S., as any four-wheeled electric vehicle complying with federal safety standards whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles.

Sellers of low speed vehicles are required to be licensed as motor vehicle dealers. These same businesses are not required to be licensed to sell golf carts. Low speed vehicles and golf carts are similar in design. This change would eliminate the requirement that sellers of low speed vehicles be licensed as motor vehicle dealers.

Driver's Licenses and Identification Cards

Background: The REAL ID Act

The REAL ID Act of 2005, signed into law in May 2005, sets a May 2008 deadline for states to add detailed personal information to driver's licenses and identification (ID) cards to ensure that licensed drivers and persons issued ID cards are U.S. citizens or legal immigrants. Florida has begun the implementation of the Real ID Act to ensure that Florida's driver licenses and ID cards can be used for Federal identification purposes.

Currently the following provisions of the Real ID Act are being enforced in Florida:

- Requiring identity documents which evidences lawful presence;
- Obtaining minimum document requirements of full legal name, date of birth, and gender;
- Capturing and digitizing photographs and signatures;
- Obtaining the address of principle residence;
- Producing licenses and identification cards with three levels of security features – overt, covert, and forensic as well as the security of the equipment and materials;
- Utilizing common machine readable technology with defined minimum data elements;
- Obtaining proof of Social Security Number which is verified through the Social Security Administration;
- Verifying legal presence through the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE);
- Issuing temporary and limited tenure licenses and identification cards for non-citizens based on term of legal presence;
- Providing digital scanning and storing of identity source documents of non-United States citizens and the use of document authentication equipment;
- Providing fraudulent document training for field staff statewide;
- Subjecting all persons authorized to manufacture or procedure cards to appropriate security clearances. (Criminal back ground checks for employees and vendors);
- Maintaining a state motor vehicles database that contains all data fields printed on the drivers' licenses and identification cards; and their driving histories; and
- Limiting the period of validity of all driver's licenses and identification cards to a period not to exceed eight years.

The bill contains revisions to definitions and the application process for driver's licenses and ID cards in Chapter 322, Florida Statutes, to ensure compliance with all the provisions of the federal Real ID Act.

Driver's License Definitions

Currently s. 322.01, F.S., defines "driver's license" as a certificate which, subject to all other requirements of law, authorizes an individual to drive a motor vehicle. Currently this section of law does not provide definitions for identification cards or temporary driver licenses.

The bill amends s. 322.01, F.S., to revise the following definitions to comply with federal codes:

- "Driver's license" denotes an operator's license as defined in 49 U.S.C. s. 30301;
- "Identification card" means a personal identification card issued by the department and which conforms to the definition in 18 U.S.C. s. 1028 (D);
- "Temporary driver license" means a certificate issued by the department, subject to all other requirements of law, which authorizes an individual to drive a motor vehicle, and which denotes an operator's license as defined in 49 U.S.C. s. 30301, and which denotes that the holder is permitted to stay for a short duration of time specified in the document issued and is not a permanent resident of the United States, and
- "Temporary identification card" means a personal identification card issued by the department that conforms to the definition in 18 U.S.C. s. 1028(D), and denotes that the holder is not a permanent resident of the United States but is permitted to stay in the United States for a short duration of time specified on the card.

Application for Licenses

Currently, s. 322.08, F.S., requires the following information for proof of nonimmigrant classification provided by the Department of Homeland Security, for an original driver's license:

- A notice of hearing from an immigration court scheduling a hearing;
- A notice from the Board of Immigration Appeals acknowledging a pending appeal;
- A notice of the approval of an application for adjustment of status issued by the Immigration and Naturalization Service,
- Any official documentation confirming the filing of a petition for asylum status or other relief issued by the Immigration and Naturalization Service;
- A notice of action transferring any pending matter from another jurisdiction to this state issued by the Immigration and Naturalization Service; and
- An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States.

The bill would allow the documentation of refugee status and evidence that an application is pending for adjustment of status to that of an alien or conditional permanent resident status in the United States to be used for proof of non-immigrant classification. To use such evidence a visa number must be available with a current priority date for processing by the Citizenship and Immigration Services.

Also under s. 322.08, F.S., the presentation of an employment authorization card, or proof of nonimmigrant classification, both provided by the Department of Homeland Security, for an original driver's license, entitles the applicant to a driver's license for a period not to exceed the expiration date of the document presented or two years, whichever occurs first. The bill would change the maximum period of entitlement for a driver's license from two years to one year if these documents are presented by the applicant.

ID Cards

Currently s. 322.051, F.S., relating to ID cards, provides that any person who is 12 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking

permit¹², under Florida law can be issued an ID card by DHSMV upon completion of an application and payment of an application fee. The bill would amend s. 322.051, F.S., changing the minimum age requirement that ID cards may be issued from 12 years old to five years old.

Section 322.051, F.S., also requires the following documents to be presented in order to prove non-immigrant classification for purposes of obtaining an ID card:

- A notice of hearing from an immigration court scheduling;
- A notice from the Board of Immigration Appeals acknowledging a pending appeal;
- A notice of the approval of an application for adjustment of status issued by the Bureau of Citizenship and Immigration Services;
- Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the Bureau of Citizenship and Immigration Services;
- A notice of action transferring any pending matter from another jurisdiction to Florida, issued by the Bureau of Citizenship and Immigration Services; and
- An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States.

The bill would allow evidence that an application is pending for adjustment of status to that of an alien or conditional permanent resident status in the United States to be used for proof of non-immigrant classification. To use such evidence a visa number must be available with a current priority date for processing by the Citizenship and Immigration Services.

Also under s. 322.051, F.S., the presentation of an employment authorization card, or proof of nonimmigrant classification, both provided by the Department of Homeland Security, for an original identification card, entitles the applicant to an identification card for a period not to exceed the expiration date of the document presented or two years, whichever occurs first. The bill would change the maximum period of entitlement for driver's identification cards from two years to one year if these documents are presented by the applicant.

Driver License Digital Image and Record Sharing

The Help America Vote Act of 2002

On October 29, 2002, the U.S. Congress passed and the President signed the federal Help America Vote Act of 2002 ("HAVA"). It authorizes over \$3 billion dollars in federal aid over three years to the states to upgrade antiquated voting equipment, to assist the states in meeting the new election administration requirements in the bill, and for other election administration projects. It also contains several new, highly-technical substantive requirements. The Florida Legislature has already enacted a number of reforms that go a long way toward meeting the new federal requirements. There are still some provisions of Florida law that need amending to meet HAVA's new, somewhat technical substantive requirements.

One requirement of HAVA is:

Statewide Voter Registration System: By January 1, 2006 (pursuant to requested waiver of a 2004 deadline by the State of Florida), the State must make operational a statewide voter registration system that will serve as the official registration record for all federal elections; the system database must be cross-referenced against driver's license and social security administration records to confirm the identities of persons registering to vote.

HAVA Computerized Statewide Voter Registration List Requirements

¹² S. 320.0848, F.S.

The statewide voter registration list must be an interactive statewide list maintained and administered at the state level, containing the name and address of every voter, with a unique identifier having the following attributes:

- Serves as the single system for storing and managing the official list of voters;
- Must contain the name and registration information of every registered voter in the state;
- Must have a unique identifier assigned to each voter;
- Must coordinate with other agency databases;
- Any election official in the state must be able to obtain immediate electronic access to the information;
- Supervisors of elections must enter information in the database on an expedited basis;
- State must provide support to supervisors; and
- Serves as the official voter registration list for federal elections.

Section 322.142, F.S., relating to color photographic or digital imaged licenses, allows DHSMV to maintain a film negative or print file and requires the department to maintain a record of the digital image and signature of the licensees, with other data required by the department for identification and retrieval. Reproductions are only permitted for departmental administrative purposes or for the issuance of duplicate licenses, in response to law enforcement agency requests or to certain state agencies (including the Department of State) pursuant to interagency agreements.

This change would allow DHSMV to share driver license digital images and records with Supervisors of Elections for determining voter eligibility. Current law allows this information to be shared with the Department of State for determining voter eligibility, but not with the Supervisors of Elections.

Suspension of License and Right to Review

Background: Driving Under the Influence (DUI)

Currently, when an individual is arrested for a violation of s. 316.193, F.S., and has an unlawful blood or breath level of .08 or higher or refuses to submit to a breath, blood or urine test when requested by a law enforcement officer, the individual's driving privilege is suspended at the time of arrest. The bill revises various provisions to Chapter 322, to provide clarification and consistency between driver license administrative suspension laws, ss. 322.2615 and 322.2616, and also addresses issues raised by courts in cases involving DHSMV's implementation of these sections.

Lawful Arrest

According to a recent Florida case¹³, Section 322.2615, F.S., provides that during a formal administrative review of a driver license suspension, the hearing officer must determine whether the person was placed under lawful arrest for a violation of s. 316.193, F.S., if the validity of the traffic stop is challenged. The court's opinion stated, "This provision contemplates that issues relating to the lawfulness of the stop... will be resolved under the issue concerning the lawfulness of the arrest."¹⁴

Driver License Suspension—Procedures & Reviews

The bill makes the following changes to s. 322.2615, F.S. to negate the need for DHSMV to show during the administrative review of a driver license suspension that a lawful arrest for a violation of s. 316.193, F.S. occurred in order to suspend the driver's license. The bill:

- Clarifies the following grounds for a suspension of driving privileges by a law enforcement or correctional officer:
 - Driving or in actual physical control of a motor vehicle with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher,

¹³ See Adam Schwartz v. State of Florida, Department of Highway Safety and Motor Vehicles, 920 So.2d 664 (Fla 3rd DCA 2005)

¹⁴ *ID.*

- Refusing to submit to a urine test, or a test of his or her breath-alcohol or blood-alcohol level;
- Provides that if a blood test has been administered and the results are not available at the time of arrest, the officer, or the agency employing the officer, is required to transmit the results to DHSMV within 5 days after receipt of the results.
- Requires the law enforcement officer to forward to DHSMV, within 5 days after issuing the notice of suspension of the driver's license, an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages, or chemical or controlled substances;
- Clarifies the language relating to informal review by changing the word arrested to suspended;
- Clarifies the authority of hearing officer when suspension is under formal review, specifying that the hearing officer may subpoena and question officers and witnesses;
- Clarifies the issues within the scope of review for formal review hearings, specifying the blood and breath alcohol level for suspension, and removing the reference to arrest under s. 316.193, F.S.;
- Provides that materials submitted to DHSMV by law enforcement or correctional agencies are self-authenticating and are part of the record to be considered by the hearing officer;
- Requires the crash report to be considered by the hearing officer notwithstanding the prohibition of s. 316.066(4), F.S., against the use of crash reports in civil or criminal trials;
- Clarifies the language related to DHSMV procedures that follow the hearing officer's determination, specifying that the suspension period commences on the date of issuance of notice of suspension rather than the date of arrest;
- Allows a law enforcement agency to appeal any decision of DHSMV that invalidates the suspension by a petition for writ of certiorari to the circuit court; and
- Provides that DHSMV's decision, and any circuit court review of that decision, may not be considered in any DUI trial for a violation of s. 316.193, F.S.

Technical Changes

Reexamination of Drivers

The bill makes technical changes to s. 322.121, F.S., related to the periodic reexamination of drivers. This change would correct the cross references to paragraphs (a) through (f) of s. 322.57(1).

Motor Vehicle Dealers

The bill makes technical changes to s. 320.27(9) (b)18. F.S., of the motor vehicle dealer law to change the word 'owned' to 'owed' and to correct a cross reference to s. 320.02(17).

Gross Vehicle Weight

The bill makes technical changes to s. 316.302, F.S., related to commercial motor vehicle's safety regulations. This change would correct a reference to declared gross vehicle weight of less than 26,000 pounds to declared gross vehicle weight of less than 26,001 pounds.

Effective Date

Except as specifically provided in various sections of the bill, the act would become effective on October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 207.008, F.S., to revise the requirements for retention of records by motor carriers as required by DHSMV;

Section 2 amends s. 207.021, F.S., to provide for informal conferences to DHSMV to resolve disputes arising from the assessment of taxes, penalties, or interest;

Section 3 amends s. 316.003, F.S., to exclude miniature motorcycles from the definition of motorcycle; to provide a definition of "motorized scooter"; to define the term "miniature motorcycle"; and to conform current definitions of "saddle mount" to federal definitions;

Section 4 amends s. 316.211, F.S., effective January 1, 2007, to require motorcycle riders under 21 years old to display a license plate unique in design and color;

Section 5 creates s. 316.2123, F.S., to allow "ATV's" to be operated by licensed drivers during the daytime on unpaved roads where the posted speed limit is less than 35 miles per hour; requiring proof of ownership by the operator;

Section 6 creates s. 316.2128, F.S., to prohibit the operation of "motorized scooters" and "miniature motorcycles" on public roads and sidewalks; to require the operator to have proof of ownership in possession at all times; to require a person selling "motorized scooters" and "miniature motorcycles" to provide a notice that these vehicles are not legal to operate on public roads or sidewalks; and to provide penalties for violations;

Section 7 amends s. 316.221, F.S., to provide a taillamp exemption for dump trucks;

Section 8 amends s. 316.302, F.S., to provide updates to federal regulations regarding commercial motor vehicle rules and regulations; to bring the intrastate hours-of-service requirements into compliance with federal tolerance allowances; to conform state utility and agricultural transportation law with federal law; and to revise the requirements for a CDL vision exemption;

Section 9 amends s. 316.515, F.S., to allow the operation of certain forestry equipment on public roads; and to conform current definitions of "automobile towaway and driveaway operations" and "saddle mount" to federal definitions;

Section 10 amends s. 318.1215, F.S., the Dori Slosberg Driver Education Safety Act, to provide an increase in the amount of money the clerk of the court may collect for with each traffic penalty from \$3 to \$5;

Section 11 amends s. 318.14, F.S., to exclude drivers exceeding the speed posted speed limit by 30 miles per hour or more from paying a fine and attending traffic school in lieu of a court appearance;

Section 12 amends s. 318.18, F.S., to provide for a second offense in a twelve month period of exceeding the posted speed limit by 30 miles per hour or more an increase in fines from \$250 to \$500; and to increase the penalties for failing to secure loads;

Section 13 amends s. 318.19, F.S., to require a mandatory hearing for drivers exceeding the speed posted speed limit by 30 miles per hour or more;

Section 14 amends s. 319.14, F.S., to revise the definition of police vehicle for the purpose of title branding;

Section 15 amends s. 320.02, F.S., effective January 1, 2007, to require that for an original registration of any motorcycle, motor-driven cycle, or moped, the owner is to present proof that he or she has obtained the necessary endorsement as required in s. 322.57, F.S.;

Section 16 amends s. 320.0706, F.S., to revise the display of license plates on dump trucks;

Section 17 amends s. 320.089, F.S to create the “Operation Iraqi Freedom” and the “Operation Enduring Freedom” license plates;

Section 18 amends s. 320.27, F.S., to provide that sellers of low speed vehicles do not have to be licensed as motor vehicle dealers; to revise the motor vehicle dealer licensing requirements for continuing education and for training and information seminar; to change the word owned to owed; to correct a cross reference to s. 320.02(17), F.S.

Section 19 amends s. 320.405, F.S., to provide that DHSMV is authorized to enter into agreements related to the International Registration Plan tax payments;

Section 20 amends s. 322.01, F.S., to revise the definition of “driver license”; to define “identification card”, “temporary driver license”, and “temporary identification card”;

Section 21 amends s. 322.051, F.S., to revise the age requirements for the issuance of ID cards from 12 years old to five; to revise the criteria related to the proof of nonimmigrant classification of an applicant for an identification card; and to reduce the maximum period that certain ID cards are valid to one year;

Section 22 amends s. 322.08, F.S., to revise the criteria related to the proof of nonimmigrant classification of an applicant for a driver’s license; and to reduce the maximum period that drivers licenses are valid to 1 year;

Section 23 amends s. 322.12, F.S., effective January 1, 2008, to revise the safety course requirements for first-time applicants for licensure to operate a motorcycle;

Section 24 amends s. 322.121, F.S., to clarify periodic license examination requirements;

Section 25 amends s. 322.142, F.S., to allow DHSMV to share driver license digital images and records with Supervisors of Elections for determining voter eligibility;

Section 26 amends s. 322.2615, F.S., to clarify procedures, language and content related to suspension of license and right to review for driving with unlawful breath alcohol or blood-alcohol levels;

Section 27 amends s. 322.27, F.S., to increase driver license points from four to six for exceeding the posted speed limit by 30 miles per hour or more; to increase driver license points for a red light violation resulting in a crash to six points;

Section 28 provides that this bill takes effect October 1, 2006, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section, below.

D. FISCAL COMMENTS:

Traffic Control Violations

Sections 11, 12, 13, and 27 amend ss. 318.14, 318.18, 318.19, and 322.27, F.S., to increase driver license points for exceeding the posted speed limit, requires mandatory hearings, doubles the fine for a second offense for exceeding the posted speed limit by 30 miles per hour or more. The bill also increases the driver's license points for a red light violation resulting in a crash and increases the penalty for failing to secure loads. These provisions could have an indeterminate fiscal impact on the private sector and on state and local governments if violations are committed and citations are issued.

To the extent that the bill deters unsafe traffic activity in Florida, crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs.

State Impacts

Motor Carrier Compliance

Section 8 amends s. 316.302, F.S., relating to intrastate hours-of-service requirements. Florida currently receives 50% (\$3.3 million) of its allocated federal funding (\$6.6 million) through the federal Motor Carrier Safety Assistance Program (MCSAP). The provisions of the bill relating to commercial motor vehicles would allow Florida to receive full federal allocation of \$6.6 million for the MCSAP. Failure to bring intrastate requirements within the federal tolerance guidelines could jeopardize additional federal highway funding.

Police Vehicles

Section 14 amends s. 319.14, F.S., related to title branding. This change could have a positive fiscal impact on state law enforcement agencies by increasing the resale value of non-pursuit vehicles owned by law enforcement agencies.

Local Impacts

The Dori Slosberg Driver Education Safety Surcharge

Section 10 amends s. 318.1215, F.S., to provide an increase in the amount of money the clerk of the court may collect for with each traffic penalty from \$3 to \$5. To the extent that local governments choose to increase their surcharge, this provision would have an indeterminate positive impact on the driver education programs in public and nonpublic schools that are funded from this surcharge.

Police Vehicles

Section 14 amends s. 319.14, F.S., related to title branding. This change could have a positive fiscal impact on local law enforcement agencies by increasing the resale value of non-pursuit vehicles owned by law enforcement agencies.

Private Sector Impacts

Pocket Motorcycles and Motorized Scooters

Section 6 creates s. 316.2128, F.S., requiring a person selling “motorized scooters” and “miniature motorcycles” to display a notice that these vehicles are not legal to operate on roads or sidewalks. This notice and a copy of the statute must be provided to the consumer prior to purchase. Violations of the sales disclosure provision are punishable under the “Florida Deceptive and Unfair Trade Practices Act”¹⁵ and are liable for a civil penalty of not more than \$10,000 for each violation plus applicable court costs and attorney fees. This change could have an indeterminate negative fiscal impact on the sellers of these vehicles for complying with display and disclosure requirements, or if these requirements are violated.

Motor Carrier Compliance

Section 8 amends s. 316.302, F.S., relating to intrastate hours-of-service requirements. Due to hour-of-service changes the bill could have a negative fiscal impact on the commercial motor carrier industry. The amount of the operational costs associated with these changes are unknown.

Forestry Equipment

Section 9 amends s. 316.515, F.S., to allow certain forestry equipment to operate on public roads to go from one point of harvest to another. This change could have an indeterminate positive fiscal impact on the owners of the equipment being transported.

Low Speed Vehicles

Section 18 amends s. 320.27, F.S., to eliminate the requirement for sellers of low speed vehicles to be licensed as motor vehicle dealers. This change could have an indeterminate positive fiscal impact on businesses that sell low speed vehicles.

Independent Motor Vehicle Dealers

Section 18 amends s. 320.27, F.S., to require only independent motor vehicle dealers who have been in business for less than five years to complete the continuing education courses, limiting the continuing education course requirement to only those independent dealers who are relatively new to the business. This could have an indeterminate positive fiscal impact on the independent dealers who have been in business five years or more and an indeterminate positive fiscal impact on the providers of the continuing education courses.

Franchise Motor Vehicle Dealers

Section 18 amends s. 320.27, F.S., to delete the current provision requiring new franchise motor vehicle dealers to attend an eight hour training and information seminar for each initial license application. This could have an indeterminate positive fiscal impact on these franchise motor vehicle dealers and an indeterminate negative fiscal impact on the training and information seminar providers.

Motorcycle Riders

Section 23 amends s. 322.12, F.S., effective July 1, 2008 to require all applicants for a motorcycle driver's license endorsement, regardless of age, to successfully complete a motorcycle safety course. These courses are offered by different vendors throughout the state. The course registration fees vary

¹⁵ S. 501.201, F.S.

and will result in an indeterminate negative fiscal impact on motorcycle drivers over 21 and an indeterminate positive fiscal impact for the course providers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DHSMV has sufficient rule-making authority to carry out the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On **February 7, 2006** the Committee on Transportation considered PCB TR 06-03 and adopted 10 amendments which added the following issues to the proposed bill.

- Amendment #1: Increased driver license points, requires a mandatory hearing, and doubles the fine for a second offense for exceeding the posted speed limit by 30 miles per hour or more;
- Amendment #2: Increased the points for a red light violation resulting in a crash to six points (same as speeding resulting in a crash);
- Amendment #3: Increased the penalty for failing to secure loads from \$100 to \$200. Increases the driver's license suspension for a second offense from a minimum of 180 days and a maximum of one year to a minimum of one year and a maximum of two years;
- Amendment #5 Clarified the prohibition of the operation of "Pocket Motorcycles" and "Motorized Scooters" on public roads and sidewalks; required the operator to have proof of ownership; and sets out sales disclosure requirements;
- Amendment #6 Clarified the provisions on the bill relating to operating forestry equipment on public roads so that such movements are restricted to a maximum of 10 miles; and provided that such vehicles must comply with slow moving vehicle emblem requirements;
- Amendment #7: Allowed DHSMV to share driver license digital images and records with Supervisors of Elections for determining voter eligibility. Current law allows this information to be provided to the Department of State for this purpose, but does not refer to Supervisors;
- Amendment #8: Relating to Motor Carrier Compliance this amendment did the following:

- Brings the intrastate hours-of-service requirements into compliance with federal tolerance allowances;
 - Conforms state law to changes recently enacted into federal law for utilities and agricultural transportation;
 - Conforms the current definitions of “automobile towaway and driveaway operations” and “saddle mount” to federal definitions;
 - Updates the statutory reference to current Federal Motor Carrier Regulations; and
 - Makes a technical change to weight threshold requirements by changing “26,000” pounds to “26,001” pounds;
- Amendment #9: Removed the requirement for a franchise motor vehicle dealer to attend an 8 hour training and information seminar for each initial license application;
 - Amendment #10: Changed the effective date of the requirement that all first time applicants for licensure to operate a motorcycle complete a motorcycle safety course to July 1, 2008;
 - Amendment #11: Increased the amount of money the clerk of the court may collect with each traffic penalty from \$3 to \$5.

The bill was then reported favorably as amended. The legislation was filed and became HB 7079.

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A bill to be entitled

An act relating to highway safety and motor vehicles; amending s. 207.008, F.S.; revising requirements for motor carriers to retain certain records as required by the Department of Highway Safety and Motor Vehicles for tax purposes; amending s. 207.021, F.S.; authorizing the department to adopt rules establishing informal conferences to resolve disputes with motor carriers arising from the assessment of taxes, penalties, or interest or the denial of refunds; specifying certain rights of the motor carrier; providing for closing agreements to settle or compromise the taxpayer's liability; providing conditions for settlement or compromise; authorizing installment payment to settle liability; amending s. 316.003, F.S.; revising the definitions of "motor vehicle," "motorcycle," and "motorized scooter"; defining "miniature motorcycle" and "full mount"; revising the definition of "saddle mount" to provide for a full mount; amending s. 316.211, F.S.; requiring motorcycles registered to certain persons to display a license plate that is unique in design and color; providing penalties; creating s. 316.2123, F.S.; providing for all-terrain vehicle operation under certain conditions; requiring the operator to provide proof of ownership to a law enforcement officer; creating s. 316.2128, F.S.; prohibiting use of motorized scooters and miniature motorcycles on public roads and sidewalks; requiring the operator to possess proof of ownership;

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CODING: Words stricken are deletions; words underlined are additions.

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29 prohibiting causing or allowing a child or ward to operate
30 a motorized scooter or miniature motorcycle on public
31 roads or sidewalks or without proof of ownership;
32 providing penalties; providing requirements for commercial
33 sale of motorized scooters and miniature motorcycles;
34 providing that a violation of the commercial sales
35 requirements is an unfair and deceptive trade practice;
36 amending s. 316.221, F.S.; providing an exemption from
37 certain taillamp requirements for dump trucks and vehicles
38 with dump bodies; amending s. 316.302, F.S.; updating
39 reference to federal commercial motor vehicle regulations;
40 revising hours-of-service requirements for certain
41 intrastate motor carriers; revising conditions for an
42 exemption from commercial driver license requirements;
43 revising weight requirements for application of certain
44 exceptions to specified federal regulations and to
45 operation of certain commercial motor vehicles by persons
46 of a certain age; amending s. 316.515, F.S.; authorizing
47 certain uses of forestry equipment; providing width and
48 speed limitations; requiring such vehicles to be operated
49 in accordance with specified safety requirements; revising
50 length and mount requirements for automobile towaway and
51 driveaway operations; authorizing saddle mount
52 combinations to include one full mount; amending s.
53 318.1215, F.S.; increasing the amount of a local option
54 surcharge on traffic penalties; amending s. 318.14, F.S.;
55 providing exceptions to procedures for certain speed limit
56 violations; removing the option for certain offenders to

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57 attend driver improvement school; amending s. 318.18,
 58 F.S.; providing increased penalties for certain speed
 59 limit violations and violations of vehicle load
 60 requirements; defining "conviction" for specified
 61 purposes; amending s. 318.19, F.S.; requiring mandatory
 62 hearings for certain speed limit violations; amending s.
 63 319.14, F.S.; revising definition of "police vehicle" for
 64 purpose of resale or exchange; amending s. 320.02, F.S.;
 65 requiring proof of required endorsement on a driver
 66 license as a condition for original registration of a
 67 motorcycle, motor-driven cycle, or moped; amending s.
 68 320.0706, F.S.; revising license display requirements for
 69 dump trucks; amending s. 320.089, F.S.; providing for
 70 Operation Iraqi Freedom and Operation Enduring Freedom
 71 license plates for qualified military personnel; amending
 72 s. 320.27, F.S.; revising motor vehicle dealer licensing
 73 requirements; revising the definition of "motor vehicle"
 74 to provide an exception for certain low-speed vehicles;
 75 revising conditions for license renewal for certain
 76 independent dealers; removing certain training provisions;
 77 correcting terminology; correcting a cross-reference;
 78 amending s. 320.405, F.S.; authorizing the department to
 79 enter into certain agreements to schedule payments to
 80 settle certain liabilities under the International
 81 Registration Plan; amending s. 322.01, F.S.; revising the
 82 definition of "driver's license"; defining "identification
 83 card," "temporary driver's license," and "temporary
 84 identification card"; amending s. 322.051, F.S.; revising

85 the age requirement for issuance of an identification
86 card; revising criteria for proof of the identity and
87 status of an applicant for an identification card;
88 revising the period of issuance for certain temporary
89 identification cards; amending s. 322.08, F.S.; revising
90 criteria for proof of the identity and status of an
91 applicant for a driver license; revising the period of
92 issuance for certain temporary driver licenses or permits;
93 amending s. 322.12, F.S.; requiring all first-time
94 applicants for licensure to operate a motorcycle to
95 provide proof of completion of a motorcycle safety course;
96 amending s. 322.121, F.S.; revising periodic license
97 examination requirements; providing for such testing of
98 applicants for renewal of a license under provisions
99 requiring an endorsement permitting the applicant to
100 operate a tank vehicle transporting hazardous materials;
101 amending s. 322.142, F.S.; providing authority for driver
102 license digital images and signatures to be reproduced and
103 provided to supervisors of elections for certain purposes;
104 amending s. 322.2615, F.S.; revising provisions for
105 suspension of driver licenses and review of suspension by
106 the department; revising criteria for notice of the
107 suspension; providing that certain materials shall be
108 considered self-authenticating and available to a hearing
109 officer; revising authority of the hearing officer to
110 subpoena and question witnesses; removing provision for
111 the department and the person arrested to subpoena
112 witnesses; providing for appeal by a law enforcement

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agency of a department decision invalidating a suspension;
 providing that the court review may not be used in a trial
 for driving under the influence; amending s. 322.27, F.S.;
 providing for an increase in driver license points
 assessed for certain speed limit violations and for
 traffic control signal device violations resulting in a
 crash; defining "conviction" for specified purposes;
 providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 207.008, Florida Statutes, is amended
 to read:

207.008 Retention of records by motor carrier.--Each
 registered motor carrier shall maintain and keep pertinent
 records and papers as may be required by the department for the
 reasonable administration of this chapter and shall preserve the
records upon which each quarterly tax return is based for 4
years after the due date or filing date of the return, whichever
is later ~~such records as long as required by s. 213.35.~~

Section 2. Section 207.021, Florida Statutes, is amended
 to read:

207.021 Informal conferences; settlement or compromise of
taxes, penalties, or interest.--~~The department may settle or~~
~~compromise, pursuant to s. 213.21, penalties or interest imposed~~
~~under this chapter.~~

(1)(a) The department may adopt rules pursuant to ss.
120.536(1) and 120.54 for establishing informal conferences to

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resolve disputes arising from the assessment of taxes,
penalties, or interest or the denial of refunds.

(b) During any proceeding arising under this section, the
motor carrier has the right to be represented at and record all
proceedings at the motor carrier's expense.

(2)(a) The executive director of the department or his or
her designee is authorized to enter into closing agreements with
any taxpayer settling or compromising the taxpayer's liability
for any tax, interest, or penalty assessed under this chapter.
The agreement shall be in writing and must be in the form of a
closing agreement approved by the department and signed by the
executive director or his or her designee. The agreement shall
be final and conclusive except upon a showing of material fraud
or misrepresentation of material fact. No additional assessment
may be made by the department against the taxpayer for the tax,
interest, or penalty specified in the closing agreement for the
time specified in the closing agreement, and the taxpayer shall
not be entitled to institute any judicial or administrative
proceeding to recover any tax, interest, or penalty paid
pursuant to the closing agreement. The executive director or his
or her designee is authorized to approve any such closing
agreement.

(b) Notwithstanding the provisions of paragraph (a), for
the purpose of settling and compromising the liability of any
taxpayer for tax or interest on the grounds of doubt as to
liability based on the taxpayer's reasonable reliance on a
written determination issued by the department, the department
may compromise the amount of such tax or interest resulting from

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169 such reasonable reliance.

170 (3) A taxpayer's liability for any tax or interest
171 specified in this chapter may be compromised by the department
172 upon the grounds of doubt as to liability for or the ability to
173 collect such tax or interest. Doubt as to the liability of a
174 taxpayer for tax and interest exists if the taxpayer
175 demonstrates that he or she reasonably relied on a written
176 determination of the department.

177 (4) A taxpayer's liability for any tax or interest under
178 this chapter shall be settled or compromised in whole or in part
179 whenever or to the extent allowable under the International Fuel
180 Tax Agreement Articles of Agreement.

181 (5) A taxpayer's liability for penalties under this
182 chapter may be settled or compromised if it is determined by the
183 department that the noncompliance is due to reasonable cause and
184 not to willful negligence, willful neglect, or fraud.

185 (6) The department is authorized to enter into agreements
186 for scheduling payments of taxes, penalties, and interest due to
187 the department as a result of audit assessments issued under
188 this chapter.

189 Section 3. Subsections (21), (22), (43), and (82) of
190 section 316.003, Florida Statutes, are amended, and subsection
191 (86) is added to that section, to read:

192 316.003 Definitions.--The following words and phrases,
193 when used in this chapter, shall have the meanings respectively
194 ascribed to them in this section, except where the context
195 otherwise requires:

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196 (21) MOTOR VEHICLE.--Any self-propelled vehicle not
197 operated upon rails or guideway, but not including any bicycle,
198 ~~motorized scooter~~, electric personal assistive mobility device,
199 or moped.

200 (22) MOTORCYCLE.--Any motor vehicle having a seat or
201 saddle for the use of the rider and designed to travel on not
202 more than three wheels in contact with the ground, but excluding
203 a tractor, a miniature motorcycle, or a moped.

204 (43) SADDLE MOUNT; FULL MOUNT.--An arrangement whereby the
205 front wheels of one vehicle rest in a secured position upon
206 another vehicle. All of the wheels of the towing vehicle are
207 upon the ground and only the rear wheels of the towed vehicle
208 rest upon the ground. Such combinations may include one full
209 mount, whereby a smaller transport vehicle is placed completely
210 on the last towed vehicle.

211 (82) MOTORIZED SCOOTER.--Any vehicle not having a seat or
212 saddle for the use of the rider, designed to travel on not more
213 than three wheels, and not capable of propelling the vehicle at
214 a speed greater than 30 miles per hour on level ground and that,
215 because of its small size, its design or lack of required safety
216 equipment, or other noncompliance with federal regulations, is
217 not eligible for a manufacturer's certificate of origin and for
218 registration pursuant to chapter 320.

219 (86) MINIATURE MOTORCYCLE.--Any vehicle having a seat or
220 saddle for the use of the rider and designed to travel on not
221 more than three wheels in contact with the ground and that,
222 because of its small size, its design or lack of required safety
223 equipment, or other noncompliance with federal regulations, is

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224 not eligible for a manufacturer's certificate of origin and for
225 registration as a motorcycle pursuant to chapter 320. The term
226 does not include off-highway vehicles as defined in chapter 317.

227 Section 4. Effective January 1, 2007, subsection (6) of
228 section 316.211, Florida Statutes, is renumbered as subsection
229 (7), and a new subsection (6) is added to that section, to read:

230 316.211 Equipment for motorcycle and moped riders.--

231 (6) Motorcycles registered to persons who have not
232 attained 21 years of age shall display a license plate that is
233 unique in design and color.

234 (7)~~(6)~~ A violation of this section is a noncriminal
235 traffic infraction, punishable as a nonmoving violation as
236 provided in chapter 318.

237 Section 5. Section 316.2123, Florida Statutes, is created
238 to read:

239 316.2123 Operation of an ATV on certain roadways.--The
240 operation of an ATV as defined in s. 317.0003 upon the public
241 roads or streets of this state is prohibited, except that an ATV
242 may be operated during the daytime on an unpaved roadway where
243 the posted speed limit is less than 35 miles per hour by a
244 licensed driver or by a minor under the supervision of a
245 licensed driver. The operator must provide proof of ownership
246 pursuant to chapter 317 upon request by a law enforcement
247 officer.

248 Section 6. Section 316.2128, Florida Statutes, is created
249 to read:

250 316.2128 Operation of motorized scooters and miniature
251 motorcycles; requirements for sales.--

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252 (1) The operation of motorized scooters and miniature
253 motorcycles, as defined in s. 316.003, on the public roads or
254 streets of this state or on the sidewalks of this state is
255 prohibited, and such vehicles may not be registered pursuant to
256 chapter 320. Except when operating the vehicle on the operator's
257 own private property, the operator of such a vehicle must keep
258 proof of ownership in the form of a receipt, sales invoice, bill
259 of sale, or other written documentation in his or her possession
260 at all times.

261 (2)(a) No person shall cause or knowingly permit his or
262 her child or ward who has not attained 16 years of age to drive
263 a motorized scooter or miniature motorcycle in violation of
264 subsection (1).

265 (b) No person shall cause or knowingly permit his or her
266 child or ward who is between 16 to 18 years of age and who is
267 not a licensed driver to drive a motorized scooter or miniature
268 motorcycle in violation of subsection (1).

269 (3) A violation of subsection (1) or subsection (2) is a
270 noncriminal traffic infraction, punishable as a moving violation
271 as provided in chapter 318. A minor in violation of any
272 provision of this section is also subject to the additional
273 sanctions of s. 318.143.

274 (4) A person who engages in the business of, serves in the
275 capacity of, or acts as a commercial seller of motorized
276 scooters or miniature motorcycles in this state must comply with
277 this subsection. Each such person shall prominently display at
278 his or her place of business a notice that such vehicles are not
279 legal to operate on public roads or sidewalks and may not be

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registered as motor vehicles. The required notice must also appear in all forms of advertising offering motorized scooters or miniature motorcycles for sale. The notice and a copy of this section must also be provided to a consumer prior to the consumer's purchasing or becoming obligated to purchase a motorized scooter or a miniature motorcycle. Any person selling or offering a motorized scooter or a miniature motorcycle for sale in violation of this subsection commits an unfair and deceptive trade practice as defined in part II of chapter 501.

Section 7. Subsection (2) of section 316.221, Florida Statutes, is amended to read:

316.221 Taillamps.--

(2) Either a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted. Dump trucks and vehicles with dump bodies are exempt from the requirements of this subsection.

Section 8. Paragraph (b) of subsection (1), paragraphs (b), (c), (d), (f), and (i) of subsection (2), and subsection (3) of section 316.302, Florida Statutes, are amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.--

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(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus, as such rules and regulations existed on October 1, 2005 2004.

(2)

(b) Except as provided in 49 C.F.R. s. 395.1(k), a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive:

1. More than 12 hours following 10 consecutive hours off duty; or

2. For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty is exempt from 49 C.F.R. s. 395.3(a) and (b) and may, after 8 hours' rest, and following the required initial motor vehicle inspection, be permitted to drive any part of the first 15 on duty hours in any 24 hour period, but may not be permitted to operate a commercial motor vehicle after that until the requirement of another 8 hours' rest has been fulfilled.

The provisions of this paragraph do not apply to drivers of utility service vehicles as defined in 49 C.F.R. s. 395.2 ~~public utility vehicles or authorized emergency vehicles during periods of severe weather or other emergencies.~~

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334 (c) Except as provided in 49 C.F.R. s. 395.1(k), a person
335 who operates a commercial motor vehicle solely in intrastate
336 commerce not transporting any hazardous material in amounts that
337 require placarding pursuant to 49 C.F.R. part 172 may not drive
338 after having been on duty more than 70 hours in any period of 7
339 consecutive days or more than 80 hours in any period of 8
340 consecutive days if the motor carrier operates every day of the
341 week. Twenty-four be on duty more than 72 hours in any period of
342 7 consecutive days, but carriers operating every day in a week
343 may permit drivers to remain on duty for a total of not more
344 than 84 hours in any period of 8 consecutive days; however, 24
345 consecutive hours off duty shall constitute the end of any such
346 period of 7 or 8 consecutive days. This weekly limit does not
347 apply to a person who operates a commercial motor vehicle solely
348 within this state while transporting, during harvest periods,
349 any unprocessed agricultural products or unprocessed food or
350 fiber that is ~~are~~ subject to seasonal harvesting from place of
351 harvest to the first place of processing or storage or from
352 place of harvest directly to market or while transporting
353 livestock, livestock feed, or farm supplies directly related to
354 growing or harvesting agricultural products. Upon request of the
355 Department of Transportation, motor carriers shall furnish time
356 records or other written verification to that department so that
357 the Department of Transportation can determine compliance with
358 this subsection. These time records must be furnished to the
359 Department of Transportation within 10 days after receipt of
360 that department's request. Falsification of such information is
361 subject to a civil penalty not to exceed \$100. The provisions of

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CODING: Words stricken are deletions; words underlined are additions.

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362 this paragraph do not apply to drivers of ~~public~~ utility service
363 vehicles as defined in 49 C.F.R. s. 395.2 ~~or authorized~~
364 ~~emergency vehicles during periods of severe weather or other~~
365 ~~emergencies.~~

366 (d) A person who operates a commercial motor vehicle
367 solely in intrastate commerce not transporting any hazardous
368 material in amounts that require placarding pursuant to 49
369 C.F.R. part 172 within a 150 ~~200~~ air-mile radius of the location
370 where the vehicle is based need not comply with 49 C.F.R. s.
371 395.8, except that time records shall be maintained as
372 prescribed in 49 C.F.R. s. 395.1(e) (5).

373 (f) A person who operates a commercial motor vehicle
374 having a declared gross vehicle weight of less than 26,001
375 ~~26,000~~ pounds solely in intrastate commerce and who is not
376 transporting hazardous materials in amounts that require
377 placarding pursuant to 49 C.F.R. part 172, or who is
378 transporting petroleum products as defined in s. 376.301, is
379 exempt from subsection (1). However, such person must comply
380 with 49 C.F.R. parts 382, 392, and 393, and with 49 C.F.R. ss.
381 396.3(a) (1) and 396.9.

382 (i) A person ~~who was a regularly employed driver of a~~
383 ~~commercial motor vehicle on July 4, 1987, and~~ whose driving
384 record shows no traffic convictions, pursuant to s. 322.61,
385 during the 2-year period immediately preceding the application
386 for the commercial driver's license, ~~and~~ who is otherwise
387 qualified as a driver under 49 C.F.R. part 391, and who operates
388 a commercial vehicle in intrastate commerce only, shall be
389 exempt from the requirements of 49 C.F.R. part 391, subpart E,

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s. 391.41(b)(10). However, such operators are still subject to the requirements of ss. 322.12 and 322.121. As proof of eligibility, such driver shall have in his or her possession a physical examination form dated within the past 24 months.

(3) A person who has not attained ~~under the age of~~ 18 years of age may not operate a commercial motor vehicle, except that a person who has not attained ~~under the age of~~ 18 years of age may operate a commercial motor vehicle which has a gross vehicle weight of less than 26,001 ~~26,000~~ pounds while transporting agricultural products, including horticultural or forestry products, from farm or harvest place to storage or market.

Section 9. Subsections (5) and (10) of section 316.515, Florida Statutes, are amended to read:

316.515 Maximum width, height, length.--

(5) IMPLEMENTS OF HUSBANDRY, AGRICULTURAL TRAILERS, FORESTRY EQUIPMENT; SAFETY REQUIREMENTS.--

(a) Notwithstanding any other provisions of law, straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit not exceeding 130 inches in width, or a self-propelled agricultural implement or an agricultural tractor not exceeding 130 inches in width, is authorized for the purpose of transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to

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418 the first point of change of custody or of long-term storage,
419 and for the purpose of returning to such point of production, or
420 for the purpose of moving such tractors, movers, and implements
421 from one point of agricultural production to another, by a
422 person engaged in the production of any such product or custom
423 hauler, if such vehicle or combination of vehicles otherwise
424 complies with this section. Such vehicles shall be operated in
425 accordance with all safety requirements prescribed by law and
426 Department of Transportation rules. The Department of
427 Transportation may issue overlength permits for cotton module
428 movers greater than 50 feet but not more than 55 feet in overall
429 length.

430 (b) Notwithstanding any other provisions of law, equipment
431 not exceeding 136 inches in width and not capable of speeds
432 exceeding 20 miles per hour that is used exclusively for the
433 purpose of harvesting forestry products is authorized for the
434 purpose of transporting the equipment from one point of harvest
435 to another point of harvest, not to exceed 10 miles, by a person
436 engaged in the harvesting of forestry products. Such vehicles
437 shall be operated in accordance with all safety requirements
438 prescribed by s. 316.2295(5) and (6).

439 (10) AUTOMOBILE TOWAWAY AND DRIVEAWAY OPERATIONS.--An
440 automobile towaway or driveaway operation transporting new or
441 used trucks may use what is known to the trade as "saddle
442 mounts," if the overall length does not exceed 97 75 feet and no
443 more than three saddle mounts are towed. Such combinations may
444 include one full mount. Saddle mount combinations must also

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445 comply with the applicable safety regulations in 49 C.F.R. s.
446 393.71.

447 Section 10. Section 318.1215, Florida Statutes, is amended
448 to read:

449 318.1215 Dori Slosberg Driver Education Safety
450 Act.--~~Effective October 1, 2002,~~ Notwithstanding the provisions
451 of s. 318.121, a board of county commissioners may require, by
452 ordinance, that the clerk of the court collect an additional \$5
453 ~~\$3~~ with each civil traffic penalty, which shall be used to fund
454 driver education programs in public and nonpublic schools. The
455 ordinance shall provide for the board of county commissioners to
456 administer the funds, which shall be used for enhancement, and
457 not replacement, of driver education program funds. The funds
458 shall be used for direct educational expenses and shall not be
459 used for administration. Each driver education program receiving
460 funds pursuant to this section shall require that a minimum of
461 30 percent of a student's time in the program be behind-the-
462 wheel training. This section may be cited as the "Dori Slosberg
463 Driver Education Safety Act."

464 Section 11. Subsection (9) of section 318.14, Florida
465 Statutes, is amended to read:

466 318.14 Noncriminal traffic infractions; exception;
467 procedures.--

468 (9) Any person who does not hold a commercial driver's
469 license and who is cited for an infraction under this section
470 other than a violation of s. 316.183(2), s. 316.187, or s.
471 316.189, when the driver exceeds the posted limit by 30 miles
472 per hour or more, or s. 320.0605, s. 320.07(3)(a) or (b), s.

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322.065, s. 322.15(1), s. 322.61, or s. 322.62 may, in lieu of a court appearance, elect to attend in the location of his or her choice within this state a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. In such a case, adjudication must be withheld; points, as provided by s. 322.27, may not be assessed; and the civil penalty that is imposed by s. 318.18(3) must be reduced by 18 percent; however, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may make no more than five elections under this subsection. The requirement for community service under s. 318.18(8) is not waived by a plea of nolo contendere or by the withholding of adjudication of guilt by a court.

Section 12. Paragraph (g) is added to subsection (3) of section 318.18, Florida Statutes, and subsection (12) of that section is amended, to read:

318.18 Amount of civil penalties.--The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(3)

(g) A person cited for a second or subsequent violation of exceeding the speed limit by 30 miles per hour and above within a 12-month period shall pay a fine double the amount listed in paragraph (b). For purposes of this paragraph, the term "conviction" means a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury

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trial, or entry of a plea of guilty or nolo contendere,
notwithstanding s. 318.14(11).

(12) Two ~~One~~ hundred dollars for a violation of s.
316.520(1) or (2). If, at a hearing, the alleged offender is
found to have committed this offense, the court shall impose a
minimum civil penalty of \$200 ~~\$100~~. For a second or subsequent
adjudication within a period of 5 years, the department shall
suspend the driver's license of the person for not less than 1
year ~~180 days~~ and not more than 2 years ~~1 year~~.

Section 13. Section 318.19, Florida Statutes, is amended
to read:

318.19 Infractions requiring a mandatory hearing.--Any
person cited for the infractions listed in this section shall
not have the provisions of s. 318.14(2), (4), and (9) available
to him or her but must appear before the designated official at
the time and location of the scheduled hearing:

(1) Any infraction which results in a crash that causes
the death of another;

(2) Any infraction which results in a crash that causes
"serious bodily injury" of another as defined in s. 316.1933(1);

(3) Any infraction of s. 316.172(1)(b); ~~or~~

(4) Any infraction of s. 316.520(1) or (2); or

(5) Any infraction of s. 316.183(2), s. 316.187, or s.
316.189 of exceeding the speed limit by 30 miles per hour or
more.

Section 14. Paragraph (c) of subsection (1) of section
319.14, Florida Statutes, is amended to read:

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319.14 Sale of motor vehicles registered or used as taxicabs, police vehicles, lease vehicles, or rebuilt vehicles and nonconforming vehicles.--

(1)

(c) As used in this section:

1. "Police vehicle" means a motor vehicle owned or leased by the state or a county or municipality, marked and outfitted as a pursuit vehicle, and used in law enforcement.

2.a. "Short-term-lease vehicle" means a motor vehicle leased without a driver and under a written agreement to one or more persons from time to time for a period of less than 12 months.

b. "Long-term-lease vehicle" means a motor vehicle leased without a driver and under a written agreement to one person for a period of 12 months or longer.

c. "Lease vehicle" includes both short-term-lease vehicles and long-term-lease vehicles.

3. "Rebuilt vehicle" means a motor vehicle or mobile home built from salvage or junk, as defined in s. 319.30(1).

4. "Assembled from parts" means a motor vehicle or mobile home assembled from parts or combined from parts of motor vehicles or mobile homes, new or used. "Assembled from parts" does not mean a motor vehicle defined as a "rebuilt vehicle" in subparagraph 3., which has been declared a total loss pursuant to s. 319.30.

5. "Kit car" means a motor vehicle assembled with a kit supplied by a manufacturer to rebuild a wrecked or outdated motor vehicle with a new body kit.

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6. "Glider kit" means a vehicle assembled with a kit supplied by a manufacturer to rebuild a wrecked or outdated truck or truck tractor.

7. "Replica" means a complete new motor vehicle manufactured to look like an old vehicle.

8. "Flood vehicle" means a motor vehicle or mobile home that has been declared to be a total loss pursuant to s. 319.30(3)(a) resulting from damage caused by water.

9. "Nonconforming vehicle" means a motor vehicle which has been purchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681.

10. "Settlement" means an agreement entered into between a manufacturer and a consumer that occurs after a dispute is submitted to a program, or an informal dispute settlement procedure established by a manufacturer or is approved for arbitration before the New Motor Vehicle Arbitration Board as defined in s. 681.102.

Section 15. Effective January 1, 2007, subsection (1) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.--

(1) Except as otherwise provided in this chapter, every owner or person in charge of a motor vehicle which is operated or driven on the roads of this state shall register the vehicle in this state. The owner or person in charge shall apply to the department or to its authorized agent for registration of each such vehicle on a form prescribed by the department. Prior to an original registration of any motorcycle, motor-driven cycle, or

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583 moped, the owner shall present proof that he or she has obtained
584 the necessary endorsement as required in s. 322.57. No
585 registration is required for any motor vehicle which is not
586 operated on the roads of this state during the registration
587 period.

588 Section 16. Section 320.0706, Florida Statutes, is amended
589 to read:

590 320.0706 Display of license plates on trucks.--The owner
591 of any commercial truck of gross vehicle weight of 26,001 pounds
592 or more shall display the registration license plate on both the
593 front and rear of the truck in conformance with all the
594 requirements of s. 316.605 that do not conflict with this
595 section. To allow for better visibility, the owner of a dump
596 truck may place the rear license plate on the gate so that the
597 distance from the ground to the top of the license plate is no
598 more than 60 inches. However, the owner of a truck tractor shall
599 be required to display the registration license plate only on
600 the front of such vehicle.

601 Section 17. Subsection (4) is added to section 320.089,
602 Florida Statutes, to read:

603 320.089 Members of National Guard and active United States
604 Armed Forces reservists; former prisoners of war; survivors of
605 Pearl Harbor; Purple Heart medal recipients; Operation Iraqi
606 Freedom and Operation Enduring Freedom veterans; special license
607 plates; fee.--

608 (4) Each owner or lessee of an automobile or truck for
609 private use, truck weighing not more than 7,999 pounds, or
610 recreational vehicle as specified in s. 320.08(9)(c) or (d),

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611 which automobile, truck, or recreational vehicle is not used for
612 hire or commercial use, who is a resident of the state and a
613 current or former member of the United States military who was
614 deployed and served in Iraq during Operation Iraqi Freedom or in
615 Afghanistan during Operation Enduring Freedom shall, upon
616 application to the department, accompanied by proof of active
617 membership or former active duty status during one of these
618 operations, and upon payment of the license tax for the vehicle
619 as provided in s. 320.08, be issued a license plate as provided
620 by s. 320.06 upon which, in lieu of the registration license
621 number prescribed by s. 320.06, shall be stamped the words
622 "Operation Iraqi Freedom" or "Operation Enduring Freedom," as
623 appropriate, followed by the registration license number of the
624 plate.

625 Section 18. Paragraph (b) of subsection (1), paragraph (a)
626 of subsection (4), and paragraph (b) of subsection (9) of
627 section 320.27, Florida Statutes, are amended to read:

628 320.27 Motor vehicle dealers.--

629 (1) DEFINITIONS.--The following words, terms, and phrases
630 when used in this section have the meanings respectively
631 ascribed to them in this subsection, except where the context
632 clearly indicates a different meaning:

633 (b) "Motor vehicle" means any motor vehicle of the type
634 and kind required to be registered and titled under chapter 319
635 and this chapter, except a recreational vehicle, moped,
636 motorcycle powered by a motor with a displacement of 50 cubic
637 centimeters or less, low-speed vehicle as defined in s. 320.01,
638 or mobile home.

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639 (4) LICENSE CERTIFICATE.--
640 (a) A license certificate shall be issued by the
641 department in accordance with such application when the
642 application is regular in form and in compliance with the
643 provisions of this section. The license certificate may be in
644 the form of a document or a computerized card as determined by
645 the department. The actual cost of each original, additional, or
646 replacement computerized card shall be borne by the licensee and
647 is in addition to the fee for licensure. Such license, when so
648 issued, entitles the licensee to carry on and conduct the
649 business of a motor vehicle dealer. Each license issued to a
650 franchise motor vehicle dealer expires annually on December 31
651 unless revoked or suspended prior to that date. Each license
652 issued to an independent or wholesale dealer or auction expires
653 annually on April 30 unless revoked or suspended prior to that
654 date. Not less than 60 days prior to the license expiration
655 date, the department shall deliver or mail to each licensee the
656 necessary renewal forms. Each independent dealer who has been in
657 business for less than 5 years shall certify that the dealer
658 principal (owner, partner, officer of the corporation, or
659 director) has completed 8 hours of continuing education prior to
660 filing the renewal forms with the department. Such certification
661 shall be filed once every 2 years commencing with the 2006
662 renewal period. The continuing education shall include at least
663 2 hours of legal or legislative issues, 1 hour of department
664 issues, and 5 hours of relevant motor vehicle industry topics.
665 Continuing education shall be provided by dealer schools
666 licensed under paragraph (b) either in a classroom setting or by

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667 | correspondence. Such schools shall provide certificates of
 668 | completion to the department and the customer which shall be
 669 | filed with the license renewal form, and such schools may charge
 670 | a fee for providing continuing education. Any licensee who does
 671 | not file his or her application and fees and any other requisite
 672 | documents, as required by law, with the department at least 30
 673 | days prior to the license expiration date shall cease to engage
 674 | in business as a motor vehicle dealer on the license expiration
 675 | date. A renewal filed with the department within 45 days after
 676 | the expiration date shall be accompanied by a delinquent fee of
 677 | \$100. Thereafter, a new application is required, accompanied by
 678 | the initial license fee. A license certificate duly issued by
 679 | the department may be modified by endorsement to show a change
 680 | in the name of the licensee, provided, as shown by affidavit of
 681 | the licensee, the majority ownership interest of the licensee
 682 | has not changed or the name of the person appearing as
 683 | franchisee on the sales and service agreement has not changed.
 684 | Modification of a license certificate to show any name change as
 685 | herein provided shall not require initial licensure or
 686 | reissuance of dealer tags; however, any dealer obtaining a name
 687 | change shall transact all business in and be properly identified
 688 | by that name. All documents relative to licensure shall reflect
 689 | the new name. In the case of a franchise dealer, the name change
 690 | shall be approved by the manufacturer, distributor, or importer.
 691 | A licensee applying for a name change endorsement shall pay a
 692 | fee of \$25 which fee shall apply to the change in the name of a
 693 | main location and all additional locations licensed under the
 694 | provisions of subsection (5). ~~Each initial license application~~

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695 ~~received by the department shall be accompanied by verification~~
 696 ~~that, within the preceding 6 months, the applicant, or one or~~
 697 ~~more of his or her designated employees, has attended a training~~
 698 ~~and information seminar conducted by a licensed motor vehicle~~
 699 ~~dealer training school. Such seminar shall include, but is not~~
 700 ~~limited to, statutory dealer requirements, which requirements~~
 701 ~~include required bookkeeping and recordkeeping procedures,~~
 702 ~~requirements for the collection of sales and use taxes, and such~~
 703 ~~other information that in the opinion of the department will~~
 704 ~~promote good business practices. No seminar may exceed 8 hours~~
 705 ~~in length.~~

706 (9) DENIAL, SUSPENSION, OR REVOCATION.--

707 (b) The department may deny, suspend, or revoke any
 708 license issued hereunder or under the provisions of s. 320.77 or
 709 s. 320.771 upon proof that a licensee has committed, with
 710 sufficient frequency so as to establish a pattern of wrongdoing
 711 on the part of a licensee, violations of one or more of the
 712 following activities:

713 1. Representation that a demonstrator is a new motor
 714 vehicle, or the attempt to sell or the sale of a demonstrator as
 715 a new motor vehicle without written notice to the purchaser that
 716 the vehicle is a demonstrator. For the purposes of this section,
 717 a "demonstrator," a "new motor vehicle," and a "used motor
 718 vehicle" shall be defined as under s. 320.60.

719 2. Unjustifiable refusal to comply with a licensee's
 720 responsibility under the terms of the new motor vehicle warranty
 721 issued by its respective manufacturer, distributor, or importer.
 722 However, if such refusal is at the direction of the

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manufacturer, distributor, or importer, such refusal shall not be a ground under this section.

3. Misrepresentation or false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles which any motor vehicle dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles.

4. Failure by any motor vehicle dealer to provide a customer or purchaser with an odometer disclosure statement and a copy of any bona fide written, executed sales contract or agreement of purchase connected with the purchase of the motor vehicle purchased by the customer or purchaser.

5. Failure of any motor vehicle dealer to comply with the terms of any bona fide written, executed agreement, pursuant to the sale of a motor vehicle.

6. Failure to apply for transfer of a title as prescribed in s. 319.23(6).

7. Use of the dealer license identification number by any person other than the licensed dealer or his or her designee.

8. Failure to continually meet the requirements of the licensure law.

9. Representation to a customer or any advertisement to the public representing or suggesting that a motor vehicle is a new motor vehicle if such vehicle lawfully cannot be titled in the name of the customer or other member of the public by the seller using a manufacturer's statement of origin as permitted in s. 319.23(1).

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- 751 10. Requirement by any motor vehicle dealer that a
752 customer or purchaser accept equipment on his or her motor
753 vehicle which was not ordered by the customer or purchaser.
- 754 11. Requirement by any motor vehicle dealer that any
755 customer or purchaser finance a motor vehicle with a specific
756 financial institution or company.
- 757 12. Requirement by any motor vehicle dealer that the
758 purchaser of a motor vehicle contract with the dealer for
759 physical damage insurance.
- 760 13. Perpetration of a fraud upon any person as a result of
761 dealing in motor vehicles, including, without limitation, the
762 misrepresentation to any person by the licensee of the
763 licensee's relationship to any manufacturer, importer, or
764 distributor.
- 765 14. Violation of any of the provisions of s. 319.35 by any
766 motor vehicle dealer.
- 767 15. Sale by a motor vehicle dealer of a vehicle offered in
768 trade by a customer prior to consummation of the sale, exchange,
769 or transfer of a newly acquired vehicle to the customer, unless
770 the customer provides written authorization for the sale of the
771 trade-in vehicle prior to delivery of the newly acquired
772 vehicle.
- 773 16. Willful failure to comply with any administrative rule
774 adopted by the department or the provisions of s. 320.131(8).
- 775 17. Violation of chapter 319, this chapter, or ss.
776 559.901-559.9221, which has to do with dealing in or repairing
777 motor vehicles or mobile homes. Additionally, in the case of
778 used motor vehicles, the willful violation of the federal law

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779 and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to
780 the consumer sales window form.

781 18. Failure to maintain evidence of notification to the
782 owner or coowner of a vehicle regarding registration or titling
783 fees owed ~~owned~~ as required in s. 320.02(17) ~~320.02(19)~~.

784 Section 19. Subsection (5) is added to section 320.405,
785 Florida Statutes, to read:

786 320.405 International Registration Plan; inspection of
787 records; hearings.--

788 (5) The department is authorized to enter into agreements
789 for scheduling payments of taxes and penalties due to the
790 department as a result of audit assessments issued under this
791 section.

792 Section 20. Subsection (16) of section 322.01, Florida
793 Statutes, is amended, subsections (24)-(40) are renumbered as
794 subsections (25)-(41), respectively, subsections (41) and (42)
795 are renumbered as subsections (44) and (45), respectively, and
796 new subsections (24), (42), and (43) are added to that section,
797 to read:

798 322.01 Definitions.--As used in this chapter:

799 (16) "Driver's license" means a certificate that ~~which~~,
800 subject to all other requirements of law, authorizes an
801 individual to drive a motor vehicle and that denotes an
802 operator's license as defined in 49 U.S.C. s. 30301.

803 (24) "Identification card" means a personal identification
804 card issued by the department that conforms to the definition in
805 18 U.S.C. s. 1028(D).

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806 (42) "Temporary driver's license" means a certificate
 807 issued by the department that, subject to all other requirements
 808 of law, authorizes an individual to drive a motor vehicle,
 809 denotes an operator's license as defined in 49 U.S.C. s. 30301,
 810 and denotes that the holder is not a permanent resident of the
 811 United States but is permitted to stay in the United States for
 812 a short duration of time specified on the license.

813 (43) "Temporary identification card" means a personal
 814 identification card issued by the department that conforms to
 815 the definition in 18 U.S.C. s. 1028(D) and denotes that the
 816 holder is not a permanent resident of the United States but is
 817 permitted to stay in the United States for a short duration of
 818 time specified on the card.

819 Section 21. Subsection (1) of section 322.051, Florida
 820 Statutes, is amended to read:

821 322.051 Identification cards.--

822 (1) Any person who is 5 ~~12~~ years of age or older, or any
 823 person who has a disability, regardless of age, who applies for
 824 a disabled parking permit under s. 320.0848, may be issued an
 825 identification card by the department upon completion of an
 826 application and payment of an application fee.

827 (a) Each such application shall include the following
 828 information regarding the applicant:

829 1. Full name (first, middle or maiden, and last), gender,
 830 social security card number, county of residence and mailing
 831 address, country of birth, and a brief description.

832 2. Proof of birth date satisfactory to the department.

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833 3. Proof of identity satisfactory to the department. Such
834 proof must include one of the following documents issued to the
835 applicant:

836 a. A driver's license record or identification card record
837 from another jurisdiction that required the applicant to submit
838 a document for identification which is substantially similar to
839 a document required under sub-subparagraph b., sub-subparagraph
840 c., sub-subparagraph d., sub-subparagraph e., sub-subparagraph
841 f., or sub-subparagraph g.;

842 b. A certified copy of a United States birth certificate;

843 c. A United States passport;

844 d. A naturalization certificate issued by the United
845 States Department of Homeland Security;

846 e. An alien registration receipt card (green card);

847 f. An employment authorization card issued by the United
848 States Department of Homeland Security; or

849 g. Proof of nonimmigrant classification provided by the
850 United States Department of Homeland Security, for an original
851 identification card. In order to prove such nonimmigrant
852 classification, applicants may produce but are not limited to
853 the following documents:

854 (I) A notice of hearing from an immigration court
855 scheduling a hearing on any proceeding.

856 (II) A notice from the Board of Immigration Appeals
857 acknowledging pendency of an appeal.

858 (III) Notice of the approval of an application for
859 adjustment of status issued by the United States Bureau of
860 Citizenship and Immigration Services.

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(IV) Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the United States Bureau of Citizenship and Immigration Services.

(V) Notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Bureau of Citizenship and Immigration Services.

(VI) Order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States including, but not limited to asylum.

(VII) Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, provided that a visa number is available with a current priority date for processing by the United States Citizenship and Immigration Services.

Presentation of any of the documents described in sub-subparagraph f. or sub-subparagraph g. entitles the applicant to an identification card for a period not to exceed the expiration date of the document presented or 1 year ~~2 years~~, whichever first occurs.

(b) An application for an identification card must be signed and verified by the applicant in a format designated by the department before a person authorized to administer oaths. The fee for an identification card is \$3, including payment for the color photograph or digital image of the applicant.

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888 (c) Each such applicant may include fingerprints and any
889 other unique biometric means of identity.

890 Section 22. Paragraph (c) of subsection (2) of section
891 322.08, Florida Statutes, is amended to read:

892 322.08 Application for license.--

893 (2) Each such application shall include the following
894 information regarding the applicant:

895 (c) Proof of identity satisfactory to the department. Such
896 proof must include one of the following documents issued to the
897 applicant:

898 1. A driver's license record or identification card record
899 from another jurisdiction that required the applicant to submit
900 a document for identification which is substantially similar to
901 a document required under subparagraph 2., subparagraph 3.,
902 subparagraph 4., subparagraph 5., subparagraph 6., or
903 subparagraph 7.;

904 2. A certified copy of a United States birth certificate;

905 3. A United States passport;

906 4. A naturalization certificate issued by the United
907 States Department of Homeland Security;

908 5. An alien registration receipt card (green card);

909 6. An employment authorization card issued by the United
910 States Department of Homeland Security; or

911 7. Proof of nonimmigrant classification provided by the
912 United States Department of Homeland Security, for an original
913 driver's license. In order to prove nonimmigrant classification,
914 an applicant may produce the following documents, including, but
915 not limited to:

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916 a. A notice of hearing from an immigration court
917 scheduling a hearing on any proceeding.

918 b. A notice from the Board of Immigration Appeals
919 acknowledging pendency of an appeal.

920 c. A notice of the approval of an application for
921 adjustment of status issued by the United States Immigration and
922 Naturalization Service.

923 d. Any official documentation confirming the filing of a
924 petition for asylum or refugee status or any other relief issued
925 by the United States Immigration and Naturalization Service.

926 e. A notice of action transferring any pending matter from
927 another jurisdiction to this state issued by the United States
928 Immigration and Naturalization Service.

929 f. An order of an immigration judge or immigration officer
930 granting any relief that authorizes the alien to live and work
931 in the United States, including, but not limited to, asylum.

932 g. Evidence that an application is pending for adjustment
933 of status to that of an alien lawfully admitted for permanent
934 residence in the United States or conditional permanent resident
935 status in the United States, provided that a visa number is
936 available with a current priority date for processing by the
937 United States Citizenship and Immigration Services.

938
939 Presentation of any of the documents in subparagraph 6. or
940 subparagraph 7. entitles the applicant to a driver's license or
941 temporary permit for a period not to exceed the expiration date
942 of the document presented or 1 year ~~2 years~~, whichever occurs
943 first.

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944 Section 23. Effective July 1, 2008, paragraph (a) of
945 subsection (5) of section 322.12, Florida Statutes, is amended
946 to read:

947 322.12 Examination of applicants.--

948 (5)(a) The department shall formulate a separate
949 examination for applicants for licenses to operate motorcycles.
950 Any applicant for a driver's license who wishes to operate a
951 motorcycle, and who is otherwise qualified, must successfully
952 complete such an examination, which is in addition to the
953 examination administered under subsection (3). The examination
954 must test the applicant's knowledge of the operation of a
955 motorcycle and of any traffic laws specifically relating thereto
956 and must include an actual demonstration of his or her ability
957 to exercise ordinary and reasonable control in the operation of
958 a motorcycle. Any applicant who fails to pass the initial
959 knowledge examination will incur a \$5 fee for each subsequent
960 examination, to be deposited into the Highway Safety Operating
961 Trust Fund. Any applicant who fails to pass the initial skills
962 examination will incur a \$10 fee for each subsequent
963 examination, to be deposited into the Highway Safety Operating
964 Trust Fund. In the formulation of the examination, the
965 department shall consider the use of the Motorcycle Operator
966 Skills Test and the Motorcycle in Traffic Test offered by the
967 Motorcycle Safety Foundation. The department shall indicate on
968 the license of any person who successfully completes the
969 examination that the licensee is authorized to operate a
970 motorcycle. If the applicant wishes to be licensed to operate a
971 motorcycle only, he or she need not take the skill or road test

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972 required under subsection (3) for the operation of a motor
973 vehicle, and the department shall indicate such a limitation on
974 his or her license as a restriction. Every first-time applicant
975 for licensure to operate a motorcycle ~~who is under 21 years of~~
976 ~~age~~ must provide proof of completion of a motorcycle safety
977 course, as provided for in s. 322.0255, before the applicant may
978 be licensed to operate a motorcycle.

979 Section 24. Subsection (8) of section 322.121, Florida
980 Statutes, is amended to read:

981 322.121 Periodic reexamination of all drivers.--

982 (8) In addition to any other examination authorized by
983 this section, an applicant for a renewal of an endorsement
984 issued under s. 322.57(1)(a), (b), (c), (d), ~~or~~ (e), or (f) may
985 be required to complete successfully an examination of his or
986 her knowledge regarding state and federal rules, regulations,
987 and laws, governing the type of vehicle which he or she is
988 seeking an endorsement to operate.

989 Section 25. Subsection (4) of section 322.142, Florida
990 Statutes, is amended to read:

991 322.142 Color photographic or digital imaged licenses.--

992 (4) The department may maintain a film negative or print
993 file. The department shall maintain a record of the digital
994 image and signature of the licensees, together with other data
995 required by the department for identification and retrieval.
996 Reproductions from the file or digital record shall be made and
997 issued only for departmental administrative purposes; for the
998 issuance of duplicate licenses; in response to law enforcement
999 agency requests; to the Department of State and to the

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1000 supervisors of elections pursuant to an interagency agreement to
1001 facilitate determinations of eligibility of voter registration
1002 applicants and registered voters in accordance with ss. 98.045
1003 and 98.075; to the Department of Revenue pursuant to an
1004 interagency agreement for use in establishing paternity and
1005 establishing, modifying, or enforcing support obligations in
1006 Title IV-D cases; or to the Department of Financial Services
1007 pursuant to an interagency agreement to facilitate the location
1008 of owners of unclaimed property, the validation of unclaimed
1009 property claims, and the identification of fraudulent or false
1010 claims, and are exempt from the provisions of s. 119.07(1).

1011 Section 26. Subsections (1) through (5), paragraphs (a)
1012 and (b) of subsection (6), subsections (7) and (8), paragraph
1013 (b) of subsection (10), and subsections (13) and (14) of section
1014 322.2615, Florida Statutes, are amended to read:

1015 322.2615 Suspension of license; right to review.--

1016 (1)(a) A law enforcement officer or correctional officer
1017 shall, on behalf of the department, suspend the driving
1018 privilege of a person who is driving or in actual physical
1019 control of a motor vehicle with an ~~has been arrested by a law~~
1020 ~~enforcement officer for a violation of s. 316.193, relating to~~
1021 unlawful blood-alcohol level or breath-alcohol level of 0.08 or
1022 higher, or of a person who has refused to submit to a ~~breath,~~
1023 ~~urine, or blood~~ test or a test of his or her breath-alcohol or
1024 blood-alcohol level authorized by s. 316.1932. The officer shall
1025 take the person's driver's license and issue the person a 10-day
1026 temporary permit if the person is otherwise eligible for the
1027 driving privilege and shall issue the person a notice of

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1028 suspension. If a blood test has been administered, ~~the results~~
1029 ~~of which are not available to the officer or at the time of the~~
1030 ~~arrest~~, the agency employing the officer shall transmit the such
1031 results to the department within 5 days after receipt of the
1032 results. If the department then determines that the person ~~was~~
1033 ~~arrested for a violation of s. 316.193 and that the person~~ had a
1034 blood-alcohol level or breath-alcohol level of 0.08 or higher,
1035 the department shall suspend the person's driver's license
1036 pursuant to subsection (3).

1037 (b) The suspension under paragraph (a) shall be pursuant
1038 to, and the notice of suspension shall inform the driver of, the
1039 following:

1040 1.a. The driver refused to submit to a lawful breath,
1041 blood, or urine test and his or her driving privilege is
1042 suspended for a period of 1 year for a first refusal or for a
1043 period of 18 months if his or her driving privilege has been
1044 previously suspended as a result of a refusal to submit to such
1045 a test; or

1046 b. The driver was driving or in actual physical control of
1047 a motor vehicle ~~violated s. 316.193 by driving~~ with an unlawful
1048 blood-alcohol level or breath-alcohol level of 0.08 or higher ~~as~~
1049 ~~provided in that section~~ and his or her driving privilege is
1050 suspended for a period of 6 months for a first offense or for a
1051 period of 1 year if his or her driving privilege has been
1052 previously suspended under this section ~~for a violation of s.~~
1053 ~~316.193.~~

1054 2. The suspension period shall commence on the date of
1055 ~~arrest or~~ issuance of the notice of suspension, ~~whichever is~~

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1056 ~~later.~~

1057 3. The driver may request a formal or informal review of
1058 the suspension by the department within 10 days after the date
1059 of ~~arrest or~~ issuance of the notice of suspension, ~~whichever is~~
1060 ~~later.~~

1061 4. The temporary permit issued at the time of arrest will
1062 expire at midnight of the 10th day following the date of ~~arrest~~
1063 ~~or~~ issuance of the notice of suspension, ~~whichever is later.~~

1064 5. The driver may submit to the department any materials
1065 relevant to the suspension arrest.

1066 (2) Except as provided in paragraph (1)(a), the law
1067 enforcement officer shall forward to the department, within 5
1068 days after issuing the date of the arrest, ~~a copy of~~ the notice
1069 of suspension, the person's driver's license and ~~of the person~~
1070 ~~arrested, and a report of the arrest, including~~ an affidavit
1071 stating the officer's grounds for belief that the person was
1072 driving or in actual physical control of a motor vehicle while
1073 under the influence of alcoholic beverages or chemical or
1074 controlled substances ~~arrested was in violation of s. 316.193;~~
1075 the results of any breath or blood test or an affidavit stating
1076 that a breath, blood, or urine test was requested by a law
1077 enforcement officer or correctional officer and that the person
1078 ~~arrested refused to submit; a copy of the citation issued to the~~
1079 ~~person arrested, and the officer's description of the person's~~
1080 field sobriety test, if any; a copy of the crash report, if any;
1081 and the notice of suspension. The failure of the officer to
1082 submit materials within the 5-day period specified in this
1083 subsection and in subsection (1) shall not affect the

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department's ability to consider any evidence submitted at or prior to the hearing. The officer may also submit a copy of a videotape of the field sobriety test or the attempt to administer such test. Materials submitted to the department by a law enforcement agency or correctional agency shall be considered self-authenticating and shall be in the record for consideration by the hearing officer. Notwithstanding s. 316.066(4), the crash report shall be considered by the hearing officer.

(3) If the department determines that the license ~~of the person arrested~~ should be suspended pursuant to this section and if the notice of suspension has not already been served upon the person by a law enforcement officer or correctional officer as provided in subsection (1), the department shall issue a notice of suspension and, unless the notice is mailed pursuant to s. 322.251, a temporary permit which expires 10 days after the date of issuance if the driver is otherwise eligible.

(4) If the person whose license is suspended ~~arrested~~ requests an informal review pursuant to subparagraph (1)(b)3., the department shall conduct the informal review by a hearing officer employed by the department. Such informal review hearing shall consist solely of an examination by the department of the materials submitted by a law enforcement officer or correctional officer and by the person whose license is suspended ~~arrested~~, and the presence of an officer or witness is not required.

(5) After completion of the informal review, notice of the department's decision sustaining, amending, or invalidating the suspension of the person's driver's license ~~of the person~~

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1112 | arrested must be provided to such person. Such notice must be
1113 | mailed to the person at the last known address shown on the
1114 | department's records, or to the address provided in the law
1115 | enforcement officer's report if such address differs from the
1116 | address of record, within 21 days after the expiration of the
1117 | temporary permit issued pursuant to subsection (1) or subsection
1118 | (3).

1119 | (6)(a) If the person whose license is suspended ~~arrested~~
1120 | requests a formal review, the department must schedule a hearing
1121 | to be held within 30 days after such request is received by the
1122 | department and must notify the person of the date, time, and
1123 | place of the hearing.

1124 | (b) Such formal review hearing shall be held before a
1125 | hearing officer employed by the department, and the hearing
1126 | officer shall be authorized to administer oaths, examine
1127 | witnesses and take testimony, receive relevant evidence, issue
1128 | subpoenas for the officers and witnesses identified in documents
1129 | provided in subsection (2), regulate the course and conduct of
1130 | the hearing, question witnesses, and make a ruling on the
1131 | suspension. ~~The department and the person arrested may subpoena~~
1132 | ~~witnesses, and the party requesting the presence of a witness~~
1133 | shall be responsible for the payment of any witness fees and for
1134 | notifying in writing the state attorney's office in the
1135 | appropriate circuit of the issuance of the subpoena. If the
1136 | person who requests a formal review hearing fails to appear and
1137 | the hearing officer finds such failure to be without just cause,
1138 | the right to a formal hearing is waived and the suspension shall
1139 | be sustained.

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1140 (7) In a formal review hearing under subsection (6) or an
1141 informal review hearing under subsection (4), the hearing
1142 officer shall determine by a preponderance of the evidence
1143 whether sufficient cause exists to sustain, amend, or invalidate
1144 the suspension. The scope of the review shall be limited to the
1145 following issues:

1146 (a) If the license was suspended for driving with an
1147 unlawful blood-alcohol level or breath-alcohol level of 0.08 or
1148 higher in violation of s. 316.193:

1149 1. Whether the ~~arresting~~ law enforcement officer had
1150 probable cause to believe that the person whose license is
1151 suspended was driving or in actual physical control of a motor
1152 vehicle in this state while under the influence of alcoholic
1153 beverages or chemical or controlled substances.

1154 ~~2. Whether the person was placed under lawful arrest for a~~
1155 ~~violation of s. 316.193.~~

1156 ~~2.3-~~ Whether the person whose license is suspended had an
1157 unlawful blood-alcohol level or breath-alcohol level of 0.08 or
1158 higher as provided in s. 316.193.

1159 (b) If the license was suspended for refusal to submit to
1160 a breath, blood, or urine test:

1161 1. Whether the ~~arresting~~ law enforcement officer had
1162 probable cause to believe that the person whose license is
1163 suspended was driving or in actual physical control of a motor
1164 vehicle in this state while under the influence of alcoholic
1165 beverages or chemical or controlled substances.

1166 ~~2. Whether the person was placed under lawful arrest for a~~
1167 ~~violation of s. 316.193.~~

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1168 2.3- Whether the person whose license is suspended refused
1169 to submit to any such test after being requested to do so by a
1170 law enforcement officer or correctional officer.

1171 3.4- Whether the person whose license is suspended was
1172 told that if he or she refused to submit to such test his or her
1173 privilege to operate a motor vehicle would be suspended for a
1174 period of 1 year or, in the case of a second or subsequent
1175 refusal, for a period of 18 months.

1176 (8) Based on the determination of the hearing officer
1177 pursuant to subsection (7) for both informal hearings under
1178 subsection (4) and formal hearings under subsection (6), the
1179 department shall:

1180 (a) Sustain the suspension of the person's driving
1181 privilege for a period of 1 year for a first refusal, or for a
1182 period of 18 months if the driving privilege of such person has
1183 been previously suspended as a result of a refusal to submit to
1184 such tests, if the ~~arrested~~ person refused to submit to a lawful
1185 breath, blood, or urine test. The suspension period commences on
1186 the date of ~~the arrest or~~ issuance of the notice of suspension,
1187 ~~whichever is later~~.

1188 (b) Sustain the suspension of the person's driving
1189 privilege for a period of 6 months for a blood-alcohol level or
1190 breath-alcohol level of 0.08 or higher ~~violation of s. 316.193,~~
1191 or for a period of 1 year if the driving privilege of such
1192 person has been previously suspended under this section as a
1193 result of driving with an unlawful blood-alcohol level or
1194 breath-alcohol level ~~a violation of s. 316.193~~. The suspension
1195 period commences on the date of ~~the arrest or~~ issuance of the

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1196 notice of suspension, ~~whichever is later.~~

1197 (10) A person whose driver's license is suspended under
1198 subsection (1) or subsection (3) may apply for issuance of a
1199 license for business or employment purposes only if the person
1200 is otherwise eligible for the driving privilege pursuant to s.
1201 322.271.

1202 (b) If the suspension of the person's driver's license ~~of~~
1203 ~~the person arrested for a violation of s. 316.193,~~ relating to
1204 an unlawful blood-alcohol level or breath-alcohol level of 0.08
1205 or higher, is sustained, the person is not eligible to receive a
1206 license for business or employment purposes only pursuant to s.
1207 322.271 until 30 days have elapsed after the expiration of the
1208 last temporary permit issued. If the driver is not issued a 10-
1209 day permit pursuant to this section or s. 322.64 because he or
1210 she is ineligible for the permit and the suspension ~~for a~~
1211 ~~violation of s. 316.193,~~ relating to an unlawful blood-alcohol
1212 level or breath-alcohol level of 0.08 or higher, is not
1213 invalidated by the department, the driver is not eligible to
1214 receive a business or employment license pursuant to s. 322.271
1215 until 30 days have elapsed from the date of the suspension
1216 arrest.

1217 (13) A person may appeal any decision of the department
1218 sustaining a suspension of his or her driver's license by a
1219 petition for writ of certiorari to the circuit court in the
1220 county wherein such person resides or wherein a formal or
1221 informal review was conducted pursuant to s. 322.31. However, an
1222 appeal shall not stay the suspension. A law enforcement agency
1223 may appeal any decision of the department invalidating a

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1224 suspension by a petition for writ of certiorari to the circuit
 1225 court in the county where a formal or informal review was
 1226 conducted. This subsection shall not be construed to provide for
 1227 a de novo appeal.

1228 (14) (a) The decision of the department under this section
 1229 or any circuit court review thereof may not be considered in any
 1230 trial for a violation of s. 316.193, and a written statement
 1231 submitted by a person in his or her request for departmental
 1232 review under this section may not be admitted into evidence
 1233 against him or her in any such trial.

1234 (b) The disposition of any related criminal proceedings
 1235 does not affect a suspension for refusal to submit to a blood,
 1236 breath, or urine test, ~~authorized by s. 316.1932 or s. 316.1933,~~
 1237 imposed under this section.

1238 Section 27. Paragraph (d) of subsection (3) of section
 1239 322.27, Florida Statutes, is amended, and paragraph (j) is added
 1240 to that subsection, to read:

1241 322.27 Authority of department to suspend or revoke
 1242 license.--

1243 (3) There is established a point system for evaluation of
 1244 convictions of violations of motor vehicle laws or ordinances,
 1245 and violations of applicable provisions of s. 403.413(6)(b) when
 1246 such violations involve the use of motor vehicles, for the
 1247 determination of the continuing qualification of any person to
 1248 operate a motor vehicle. The department is authorized to suspend
 1249 the license of any person upon showing of its records or other
 1250 good and sufficient evidence that the licensee has been
 1251 convicted of violation of motor vehicle laws or ordinances, or

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1252 applicable provisions of s. 403.413(6)(b), amounting to 12 or
1253 more points as determined by the point system. The suspension
1254 shall be for a period of not more than 1 year.

1255 (d) The point system shall have as its basic element a
1256 graduated scale of points assigning relative values to
1257 convictions of the following violations:

1258 1. Reckless driving, willful and wanton--4 points.

1259 2. Leaving the scene of a crash resulting in property
1260 damage of more than \$50--6 points.

1261 3. Unlawful speed resulting in a crash--6 points.

1262 4. Passing a stopped school bus--4 points.

1263 5. Unlawful speed:

1264 a. Not in excess of 15 miles per hour of lawful or posted
1265 speed--3 points.

1266 b. In excess of 15 miles per hour but not in excess of 30
1267 miles per hour of lawful or posted speed--4 points.

1268 c. In excess of 30 miles per hour of lawful or posted
1269 speed--6 points.

1270 6.a. A violation of a traffic control signal device as
1271 provided in s. 316.074(1) or s. 316.075(1)(c)1.--4 points.

1272 b. A violation of a traffic control signal device as
1273 provided in s. 316.074(1) or s. 316.075(1)(c)1. resulting in a
1274 crash--6 points.

1275 7. All other moving violations (including parking on a
1276 highway outside the limits of a municipality)--3 points.

1277 However, no points shall be imposed for a violation of s.
1278 316.0741 or s. 316.2065(12).

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1279 8. Any moving violation covered above, excluding unlawful
1280 speed, resulting in a crash--4 points.

1281 9. Any conviction under s. 403.413(6)(b)--3 points.

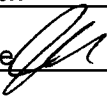

1282 10. Any conviction under s. 316.0775(2)--4 points.

1283 (j) For purposes of sub-subparagraph (d)5.c., the term
1284 "conviction" means a finding of guilt, with or without
1285 adjudication of guilt, as a result of a jury verdict, nonjury
1286 trial, or entry of a plea of guilty or nolo contendere,
1287 notwithstanding s. 318.14(11).

1288 Section 28. Except as otherwise expressly provided in this
1289 act, this act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7091 PCB CJ 06-04 Real Property Electronic Recording
SPONSOR(S): Civil Justice Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Civil Justice Committee	6 Y, 0 N	Shaddock	Bond
1) Transportation & Economic Development Appropriations Committee		McAuliffe 	Gordon 
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law provides for electronic signatures and electronic notarization of documents, but does not clearly provide for electronic recording of documents that affect real property titles. This bill adopts the Uniform Real Property Electronic Recording Act. The act starts the process towards electronic recording of real property documents with county recorders.

This bill provides county recorders the legal authority to prepare for electronic recording of real property instruments, and authorizes county recorders to begin accepting records in electronic form, storing electronic records, and setting up systems for searching for and retrieving these land records. The bill equates electronic documents and electronic signatures to original paper documents and manual signatures, so that any requirement for originality (paper document or manual signature) is satisfied by an electronic document and signature.

The standards and practices for electronic recording will be promulgated by rule by the Secretary of State after consultation with an advisory council made up of five representatives of county recorders, two representatives of title companies, and two representatives of mortgage lenders.

This bill appears to require insignificant recurring expenditures by the Secretary of State. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill creates additional rulemaking power for the Secretary of State. This bill may lead to decreased administrative burdens on government and on individuals regarding the recording of documents affecting land titles.

B. EFFECT OF PROPOSED CHANGES:

Background¹

The National Conference of Commissioners on Uniform State Laws (NCCUSL), now 114 years old, "provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state."² In 2004, the conference finalized and approved the Uniform Real Property Electronic Recording Act ("URPERA"). Currently, the act has been enacted in four states and the District of Columbia, and is filed in the legislature of seven more.³ The NCCUSL provided the following information regarding the proposed act:⁴

As a result of the enactments of the Uniform Electronic Transactions Act ("UETA")⁵ in most states, and the Electronic Signatures in Global National Commerce Act ("E-sign") at the federal level, it is now possible to have sale contracts, mortgage instruments, and promissory notes memorialized in electronic form with the electronic signatures of the parties involved in the transaction. However, real estate transactions require another step not addressed by UETA or E-sign. Real estate transaction documents must be recorded on public records in order to protect the current interest in the real estate and clarify who owns title to the property.

Real estate records establish a chain of title which is based upon the originality and authenticity of the paper documents presented for recording. There must be an orderly conversion of recording offices in the United States for implementation of an electronic recording system. The essential starting point for this process is the URPERA.

URPERA modernizes real property law for the 21st Century. It is designed to help state administrative agencies meet the demands of the public for quick identification of title ownership. It should also streamline the real estate transaction at a benefit to consumers and every facet of the real estate industry.

There are currently certain barriers to using electronic communications to carry on real estate transactions. The law of the states of the United States has many "statute of fraud" requirements that inhibit the use of electronic communications. Statute of fraud requirements put total and express

¹ The bulk of this analysis is specifically derived from "Uniform Real Property Electronic Recording Act" promulgated by the National Conference of Commissioners on Uniform State Laws in 2004, hereinafter referred to as "NCCUSL". The members of the Drafting Committee on the Uniform Real Property Electronic Recording Act were: David D. Biklen, Owen L. Anderson, Patrick C. Guillot, Carl H. Lisman, James J. White, W. Jackson Willoughby, Lee Yeakel, Arthur R. Gaudio, Fred H. Miller, Lani Liu Ewart, Dale Whitman, William H. Henning, and William J. Pierce.

² *Uniform Law Commissioners*, (Mar. 6, 2006) < <http://www.nccusl.org/Update/>>.

³ *A few facts about the Uniform Real Property Electronic Recording Act*, (Mar. 6, 2006) <http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp>. Florida is not included in this list.

⁴ *Summary, Uniform Real Property Electronic Recording Act*, (Mar. 6, 2006) <http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-urpera.asp>.

⁵ Section 668.50, F.S.

reliance upon paper documents and manual signatures to make transactions enforceable. These same requirements have also made it more difficult to develop electronic analogues to transactions in paper that are equally enforceable.

The first step to remedy the problem took place in 1999 when the Uniform Law Commissioners promulgated the UETA. This act adjusted statute of fraud provisions to include electronic "records" and "signatures" for the memorialization of all kinds of transactions, including basic transactions in real estate. It is possible to have sale contracts, mortgage instruments (in whatever form a jurisdiction uses) and promissory notes memorialized in electronic form with electronic signatures that will now be treated the equal of the same paper documents with manual signatures. This is the result of the wide-spread enactment of UETA and of the subsequent enactment of E-Sign by Congress.

Real estate transactions, however, require another step not addressed by either UETA or E-Sign. Real estate documents must be recorded on public records to be effective. Recording takes place in most states in a county office devoted to keeping these records. Recording protects current interests in real estate by clarifying who holds those interests. The chain of title leading to the current title-holder, meaning the historic record of documents relating to transactions for a specific piece of real estate, establishes the marketability of that piece of real estate by the current owner of interest in it. The real estate records establish this chain of title. State law governs these local recording offices, and there are requirements in the law of every state relating to the originality and authenticity of paper documents that are presented for recording. These are themselves "statute of fraud" provisions that must be specifically adjusted before electronic recording may take place. Neither UETA nor E-Sign address this issue.

There must be an orderly conversion of every recording office in the United States for electronic recording to become accepted universally. That will be a complex process, but it needs a starting point in the law. The URPERA, promulgated by the Uniform Law Commissioners in 2004, is that essential start.

The URPERA establishes that any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, is satisfied by an electronic document and signature. This is essentially an extension of the principles of UETA and E-Sign to the specific requirements for recording documents relating to real estate transactions in any state. Second, it establishes what standards a recording office must follow and what it must do to make electronic recording effective. Third, URPERA establishes the board that sets state-wide standards and requires it to set uniform standards that must be implemented in every recording office.

Effect of Bill

This bill adopts the URPERA, with Florida modifications. The bill defines the following terms:⁶

- "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and eligible to be recorded in the land records maintained by a county recorder.⁷⁸
- "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

⁶ The Uniform Act includes a definition of "person" that is not included in this bill. The term "person" is defined, applicable to all of the Florida Statutes, at s. 1.01(3), F.S.

⁷ Section 695.27(2)(a).

⁸ The bill uses the generic term "county recorder" to represent the clerks of the circuit court, who are the county recorder in most of the counties in Florida, and the other officials who are designated as the county recorder in select counties.

- "Electronic document" means a document that is received by a county recorder in an electronic form.
- "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.
- "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

This bill authorizes a clerk to accept and record electronic documents. Therefore, if a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying the requirements of this section. This bill further provides that, if a law requires, as a condition for recording, that a document be signed or notarized, that the requirement is satisfied by an electronic signature or electronic notarization. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

This bill provides that the Secretary of State shall promulgate rules creating standards for electronic recording, and requires county recorders to follow those rules should a county recorder accept documents filed electronically. The county recorder may elect to receive electronic documents. The county recorder may store those electronic documents, or the information contained in them, and create an index of the documents or information. The county recorder may also transmit electronic documents and communications to the recording party or to other parties. The county recorder may archive the electronic documents or the information in them as well as the index in order to preserve and protect them. A county recorder may enter into agreements with other jurisdictions regarding electronic recording.

This bill does not require that persons engaging in real estate transactions use electronic documents in order to have their documents recorded. It merely permits the county recorder to accept electronic documents if they are presented electronically. The county recorder must continue to receive paper documents and include those documents in the same index with the electronic ones.

In promulgating rules, the Department of State must consult with the Electronic Recording Advisory Council created by this bill. The Electronic Recording Advisory Council will consist of nine members. The Secretary of State must provide administrative support to the Electronic Recording Advisory Council. The members of the Electronic Recording Advisory Council are appointed by the Secretary of State, and members of the council are:

- Five clerks of circuit court or county recorders who are members of the Florida Association of Court Clerks & Comptrollers.
- Two persons working in the title insurance industry who are members of the Florida Land Title Association.
- One banker who is a member of the Florida Bankers Association.
- One mortgage broker who is a member of the Florida Association of Mortgage Brokers.

The first meeting of the Electronic Recording Advisory Council must be held on or before July 30, 2006. Thereafter, the council meets at the call of the chair. The members of the Electronic Recording Advisory Council serve without compensation, and cannot claim per diem and travel expenses from the Secretary of State.

To keep the standards, technology and practices of county recorders in this state in harmony with the standards, technology, the Department of State in consultation with the Electronic Recording Advisory Council, in adopting, amending, and repealing standards must consider:

- Standards and practices of other jurisdictions.
- The most recent standards adopted by national standard-setting bodies, such as the Property Records Industry Association.⁹
- The views of interested persons and governmental officials and entities. Among others, these persons should include county clerks and potential users of the electronic recording system such as real estate attorneys, mortgage lenders, representatives from the title and escrow industries, real estate brokers, and notaries public. Also included might be potential suppliers of hardware, software and services for electronic recording systems.
- The needs of counties of varying size, population, and resources. Because most states are quite diverse in the size, population and resources of their recording venues, it is important that the Department of State and the Electronic Recording Advisory Council consider all of their needs. This section recognizes that the standards should promote the overall good of the entire state and not just the good of certain types of recording venues.
- Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering. The authenticity of a documents stored in any recording system is of utmost importance. If forged or invalid documents are accepted for recording, landowners and those depending on their titles can be seriously affected. The Department of State and the Electronic Recording Advisory Council is also directed to consider standards for the proper preservation of electronic documents once they are in the electronic recording system.

In applying and construing s. 695.27, created by this bill, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Responding to the specific language of E-sign, this bill is designed to avoid preemption of state law under that federal legislation. This bill modifies, limits, and supersedes E-sign, 15 U.S.C. ss. 7001 et seq.,¹⁰ but this section does not modify, limit, or supersede s. 101(c) of that act,¹¹ 15 U.S.C. s.

⁹ The Property Records Industry Association's mission is "to serve the property records industry by facilitating recordation and access to public property records, by formulating and disseminating model standards, systems and procedures while preserving the integrity of those records." *What is PRIA's Mission?*, (last visited Mar. 6, 2006) <<http://www.pria.us/index.html>>.

¹⁰ The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., was enacted on June 30, 2000. Congress enacted the Act, "to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically. Careful to preserve the underlying consumer protection laws governing consumers' rights to receive certain information in writing, Congress imposed special requirements on businesses that want to use electronic records or signatures in consumer transactions. *Executive Summary*, (last visited Mar. 6, 2006) <<http://www.ftc.gov/os/2001/06/esign7.htm>>.

¹¹ In the Electronic Signatures in Global and National Commerce Act Congress:

imposed special requirements on businesses that want to use electronic records or signatures in consumer transactions. Section 101(c)(1) of the Act provides that information required by law to be in writing can be made available electronically to a consumer only if he or she affirmatively consents to receive the information electronically and the business clearly and conspicuously discloses specified information to the consumer before obtaining his or her consent.

7001(c),¹² or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).¹³

C. SECTION DIRECTORY:

Section 1 creates s. 695.27, F.S., to adopt the Uniform Real Property Electronic Recording Act, with Florida modifications.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There is a minimal fiscal impact on the Secretary of State for rulemaking and the administration of the Electronic Recording Advisory Council.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Electronic recording of documents may significantly lower costs to government and to the private sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹² 15 U.S.C. s.7001(c) states that a consumer's consent to receive electronic records is valid only if the consumer has affirmative consented and prior to the consent, he or she was provided a clear and conspicuous statement outlining the consumer's rights.

¹³ 15 U.S.C. s.7003(b) excludes from the Electronic Signatures in Global and National Commerce Act "court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings" and notices of: cancellation of utility services; defaults or foreclosures or other such proceedings on a primary residence; cancellation or termination of health or life insurance; or recall of a product because of health or safety issues, or documents required to transport toxic or dangerous materials.

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill creates additional rulemaking authority for the Secretary of State. It is anticipated that the Bureau of Archives would be assigned the responsibility for the rulemaking. An advisory body is created to assist in crafting the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment changed the following:

- Specified that the Electronic Recording Advisory Council is created.
- Provided that the chair of the Electronic Recording Advisory Council is appointed by the Secretary of State.

The bill was then reported favorably.

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A bill to be entitled

An act relating to real property electronic recording; creating s. 695.27, F.S.; providing a short title; providing definitions; providing for the validity of electronic documents relating to real property; providing for the recording of electronic documents by the county recorder; granting the Department of State rulemaking authority; creating the Electronic Recording Advisory Council; providing for membership and meetings of the council; providing that council members shall serve without compensation and may not claim per diem and travel expenses from the Secretary of State; providing guidelines for the department, in consultation with the council, to consider in adopting, amending, and repealing standards; providing for uniformity of application and construction; specifying the relation to a federal act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 695.27, Florida Statutes, is created to read:

695.27 Uniform Real Property Electronic Recording Act.--

(1) SHORT TITLE.--This section may be cited as the

"Uniform Real Property Electronic Recording Act."

(2) DEFINITIONS.--As used in this section:

(a) "Document" means information that is:

1. Inscribed on a tangible medium or that is stored in an

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electronic or other medium and is retrievable in perceivable form; and

2. Eligible to be recorded in the land records maintained by a county recorder.

(b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) "Electronic document" means a document that is received by a county recorder in an electronic form.

(d) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(e) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(3) VALIDITY OF ELECTRONIC DOCUMENTS.--

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying the requirements of this section.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic

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signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

(4) RECORDING OF DOCUMENTS.--

(a) In this subsection, the term "paper document" means a document that is received by the county recorder in a form that is not electronic.

(b) A county recorder:

1. Who implements any of the functions listed in this section shall do so in compliance with standards established by rule by the Department of State.

2. May receive, index, store, archive, and transmit electronic documents.

3. May provide for access to, and for search and retrieval of, documents and information by electronic means.

4. Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

5. May convert paper documents accepted for recording into electronic form.

6. May convert into electronic form information recorded before the county recorder began to record electronic documents.

7. May accept electronically any fee that the county recorder is authorized to collect.

8. May agree with other officials of a state or a

85 political subdivision thereof, or of the United States, on
86 procedures or processes to facilitate the electronic
87 satisfaction of prior approvals and conditions precedent to
88 recording and the electronic payment of fees.

89 (5) ADMINISTRATION AND STANDARDS.--

90 (a) The Department of State, by rule pursuant to ss.
91 120.536(1) and 120.54, shall prescribe standards to implement
92 this section in consultation with the Electronic Recording
93 Advisory Council, which is hereby created. The Secretary of
94 State shall provide administrative support to the council,
95 appoint the members of the council, and appoint the chair of the
96 council. The council shall consist of nine members, as follows:

97 1. Five clerks of circuit court or county recorders who
98 are members of the Florida Association of Court Clerks and
99 Comptroller, Inc.

100 2. Two persons working in the title insurance industry who
101 are members of the Florida Land Title Association.

102 3. One banker who is a member of the Florida Bankers
103 Association.

104 4. One mortgage broker who is a member of the Florida
105 Association of Mortgage Brokers.

106 (b) The first meeting of the council shall be held on or
107 before July 30, 2006. Thereafter, the council shall meet at the
108 call of the chair.

109 (c) The members of the council shall serve without
110 compensation and shall not claim per diem and travel expenses
111 from the Secretary of State.

112 (d) To keep the standards and practices of county

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113 recorders in this state in harmony with the standards and
114 practices of recording offices in other jurisdictions that enact
115 substantially this section and to keep the technology used by
116 county recorders in this state compatible with technology used
117 by recording offices in other jurisdictions that enact
118 substantially this section, the Department of State, in
119 consultation with the council, so far as is consistent with the
120 purposes, policies, and provisions of this section, in adopting,
121 amending, and repealing standards, shall consider:

122 1. Standards and practices of other jurisdictions.

123 2. The most recent standards adopted by national standard-
124 setting bodies, such as the Property Records Industry
125 Association.

126 3. The views of interested persons and governmental
127 officials and entities.

128 4. The needs of counties of varying size, population, and
129 resources.

130 5. Standards requiring adequate information security
131 protection to ensure that electronic documents are accurate,
132 authentic, adequately preserved, and resistant to tampering.

133 (6) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In
134 applying and construing this section, consideration must be
135 given to the need to promote uniformity of the law with respect
136 to its subject matter among states that enact it.

137 (7) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
138 NATIONAL COMMERCE ACT.--This section modifies, limits, and
139 supersedes the federal Electronic Signatures in Global and
140 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but this

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141 section does not modify, limit, or supersede s. 101(c) of that
 142 act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of
 143 any of the notices described in s. 103(b) of that act, 15 U.S.C.
 144 s. 7003(b) .

145 Section 2. This act shall take effect upon becoming a law.

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PCB TEDA 06-01

ORIGINAL

YEAR

A bill to be entitled
An act relating to the Quick Action Closing Fund;
providing eligibility criteria; providing an
appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) and paragraphs (a) and (b) of
subsection (3) of section 288.1088, Florida Statutes, are amended
to read:

288.1088 Quick Action Closing Fund.-

(2) There is created within the Office of Tourism, Trade,
and Economic Development the Quick Action Closing Fund. Projects
eligible for the Quick Action Closing Fund must meet the
following criteria:

(a) Must be in a targeted industry as referenced in section
288.106.

(b) Must have a positive payback ratio of at least five to
one.

(c) Must be an inducement to the project's location or
expansion in Florida.

(d) Must pay an average annual wage at least 125 percent of
the area or statewide private sector average wage.

(e) Must be supported by the local community in which the
project is to locate.

(3) (a) Enterprise Florida, Inc. shall determine eligibility
of each project consistent with the criteria in subsection (2).
Enterprise Florida, Inc., in consultation with the Office of

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PCB TEDA 06-01

ORIGINAL

YEAR

Tourism, Trade and Economic Development, may waive these criteria based on extraordinary circumstances when the project would significantly benefit the local or regional economy. Enterprise Florida, Inc. shall evaluate individual proposals for high-impact business facilities and forward recommendations regarding the use of moneys in the fund for such facilities to the director of the Office of Tourism, Trade, and Economic Development. Such evaluation and recommendation must include, but need not be limited to:

1. A description of the type of facility or infrastructure, its operations, and the associated product or service associated with the facility.

2. The number of full-time-equivalent jobs that will be created by the facility and the total estimated average annual wages of those jobs or, in the case of privately developed rural infrastructure, the types of business activities and jobs stimulated by the investment.

3. The cumulative amount of investment to be dedicated to the facility within a specified period.

4. A statement of any special impacts the facility is expected to stimulate in a particular business sector in the state or regional economy or in the state's universities and community colleges.

5. A statement of the role the incentive is expected to play in the decision of the applicant business to locate or expand in this state or for the private investor to provide critical rural infrastructure.

(b) Upon receipt of the evaluation and recommendation from Enterprise Florida, Inc., the director shall recommend approval

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PCB TEDA 06-01

ORIGINAL

YEAR

59 | or disapproval of a project for receipt of funds from the Quick
60 | Action Closing Fund to the Governor. The Governor shall provide
61 | the evaluations of projects recommended for approval to the
62 | President of the Senate and the Speaker of the House of
63 | Representatives. ~~The Governor shall~~ and consult directly with
64 | the President of the Senate and Speaker of the House of
65 | Representatives before giving approval for a project. The
66 | Executive Office of the Governor shall recommend approval of a
67 | project and the release of funds pursuant to the legislative
68 | consultation and review requirements set forth in s. 216.177.
69 | The recommendation must include proposed performance conditions
70 | that the project must meet in order to obtain funds.

71 | Section 2. There is hereby appropriated \$50 million from
72 | nonrecurring funds from the General Revenue Fund in fiscal year
73 | 2006-2007 to the Quick Action Closing Fund for the 2006-2007
74 | fiscal year.

75 | Section 3. This act shall take effect July 1, 2006.